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# Federal Register

Wednesday  
November 25, 1987

**Briefings on How To Use the Federal Register—**  
For information on briefings in Denver, CO, see  
announcement on the inside cover of this issue.



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**How To Cite This Publication:** Use the volume number and the page number. Example: 52 FR 12345.

## THE FEDERAL REGISTER

### WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### DENVER, CO

- WHEN:** December 15; at 9 a.m.
- WHERE:** Room 239, Federal Building, 1961 Stout Street, Denver, CO.
- RESERVATIONS:** Call the Denver Federal Information Center, 303-844-6575



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# Rules and Regulations

Federal Register

Vol. 52, No. 227

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 16

#### Restriction on Importation of Meat from New Zealand and Australia

**AGENCY:** Office of the Secretary, USDA.  
**ACTION:** Final rule.

**SUMMARY:** This rule amends the regulations in 7 CFR Part 16, Subpart A entitled "Section 204 Import Regulations" to carry out the voluntary agreements concerning the level of 1987 meat imports from New Zealand and Australia entered into by those countries with the United States pursuant to section 204 of the Agricultural Act of 1956, as amended.

**EFFECTIVE DATE:** November 25, 1987.  
See also **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Norman R. Kallemeyn, (202) 447-8031, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, USDA, Room 6616 South Building, Washington, DC 20250.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and Executive Order 11539, as amended, the Office of the United States Trade Representative has negotiated agreements with the Governments of New Zealand and Australia whereby those countries have voluntarily agreed to limit the quantity of certain meats exported to the United States during calendar year 1987. The Secretary of Agriculture, with the concurrence of the Secretary of State and the United States Trade Representative, is authorized to carry out such agreements and to implement such action.

Presently, Title 7, Part 16, Subpart A entitled "Section 204 Import Regulations" governs the entry or withdrawal from warehouse of certain meats imported from New Zealand and Australia during calendar year 1983. This rule would amend Subpart A to delete the provisions relating to New Zealand and Australia for calendar year 1983 which no longer are in effect and insert new provisions to carry out the voluntary agreements entered into by New Zealand and Australia with the United States for calendar year 1987. The definition of meat in the regulations encompasses the Tariff Schedules of the United States (TSUS) items which are the subject of the voluntary agreements with New Zealand and Australia. In order to prevent circumvention of the import limitations, the definition also includes meat that would fall within such definition but for processing in Foreign-Trade Zones, territories, or possessions of the United States. In addition, the regulations impose transshipment restrictions which prevent the entry or withdrawal from warehouse for consumption of meat from New Zealand and Australia unless exported from those countries as direct shipments or on through bills of lading or, if processed in Foreign-Trade Zones, territories or possessions of the United States, shipped as direct shipments or on through bills of lading from such areas.

#### Effective Date

Meat released under the provisions of section 448(b) and 484(a)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1448(b)(immediate delivery), and 19 U.S.C. 1484(a)(1)(A)(entry)), prior to November 25, 1987 shall not be denied entry.

The action taken herewith has been determined to involve foreign affairs functions of the United States. Therefore, this regulation falls within the foreign affairs exception to Executive Order 12291 and the provisions of 5 U.S.C. 553 with respect to proposed rulemaking. Further, the provisions of the Regulatory Flexibility Act do not apply to this rule since the proposed rulemaking provisions of 5 U.S.C. 553 do not apply.

#### List of Subjects in 7 CFR Part 16

Meat and meat products, Imports.

Accordingly, the Regulations at 7 CFR Part 16, Subpart A entitled "Section 204 Import Regulations" are amended to read as follows:

#### PART 16—[AMENDED]

1. The authority citation for Part 16 continues to read as follows:

Authority: Sec. 204, Pub. L. 540, 84th Cong., 70 Stat. 200, as amended (7 U.S.C. 1854), and E.O. 11539 (35 FR 10733), as amended by E.O. 12188 (45 FR 989).

2. Section 16.4 is revised to read as follows:

#### § 16.4 Transshipment restrictions.

During calendar year 1987, no meat of New Zealand or Australian origin may be entered or withdrawn from warehouse for consumption in the United States unless (a) it is exported into the Customs Territory of the United States as a direct shipment or on a through bill of lading from the country of origin or, (b) if processed in Foreign-Trade Zones, territories, or possessions of the United States, it is exported into the Customs Territory of the United States as a direct shipment on a through bill of lading from the Foreign-Trade Zone, territory or possession of the United States in which it was processed.

3. Section 16.5 is revised to read as follows:

#### § 16.5 Quantitative restrictions

(a) *Imports from New Zealand.* During calendar year 1987, no more than 438 million pounds of meat exported from New Zealand in the form in which it would fall within the definition of meat in TSUS items 106.10, 106.22, 106.25, 107.55, or 107.62 may be entered or withdrawn from warehouse for consumption in the United States, whether shipped directly or indirectly from New Zealand to the United States.

(b) *Imports from Australia.* During calendar year 1987, no more than 722 million pounds of meat exported from Australia in the form in which it would fall within the definition of meat in TSUS items 106.10, 106.22, 106.25, 107.55, or 107.62 may be entered or withdrawn from warehouse for consumption in the United States, whether shipped directly or indirectly from Australia to the United States.



Issued at Washington, DC this 20th day of November, 1987.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 87-27114 Filed 11-24-87; 8:45 am]

BILLING CODE 3410-10-M

## Federal Crop Insurance Corporation

### 7 CFR Part 401

[Amdt. No. 1; Doc. No. 4974S]

## General Crop Insurance Regulations; Corn Endorsement

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section, 7 CFR 401.111, to be known as the Corn Endorsement. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection on corn grown as grain in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

**EFFECTIVE DATE:** November 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as October 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2)

certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith adds to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.111, the Corn Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring corn on a grain basis.

The provisions for insuring corn contained in 7 CFR 401.111 will supersede those provisions contained in 7 CFR Part 432, the Corn Crop Insurance Regulations, effective with the beginning of the 1988 crop year. The present policy contained in 7 CFR Part 432 will be terminated at the end of the 1987 crop year and later removed and reserved. FCIC will amend the title of 7 CFR Part 432 by separate document so that the provisions therein are effective only through the 1987 crop year.

The provisions of 7 CFR 401.111 contain those provisions applicable to insuring corn as grain. Provisions for insuring corn on a purely silage basis will be proposed for issuance as 7 CFR 401.112 the Corn Silage Option as an optional amendment to this corn endorsement in those counties where a silage guarantee is provided by the actuarial table.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Corn Endorsement to 7 CFR Part 401, FCIC is proposing other changes in the provisions for insuring corn as follows:

1. **Section 1.** Add a provision to limit insurance only to acreage which is planted in rows far enough apart to permit mechanical cultivation. Add a provision indicating that corn destroyed

to comply with other U.S. Department of Agriculture programs will not be insured. This provision is added to prevent insurance from attaching to any crop intended for destruction to comply with other U.S. Department of Agriculture programs.

2. **Section 4.** Provide that insurance will begin on each unit or portion of a unit as planted. This change is made to avoid instances when delayed planting of part of a unit after the final planting date would prevent insurance from attaching on timely planted acreage.

3. **Section 5.** Add unit division guidelines and add a clause to specify that division of units may result in the insured paying additional premium for guidelines unit division in accordance with actuarial studies which show an increased risk when units are divided. Add language to specify that nonirrigated corners of a center pivot irrigation system are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine your unit for the purpose of determining the guarantee for the unit.

4. **Section 7.** Add a provision for adjustment of a loss only on a grain basis unless the insured enters into the Corn Silage Option before the sales closing date. Add to the first step of adjustment the term 15.5% moisture. This figure has been removed from the Federal Grain Inspection Service regulations. It is necessary to insert this figure in the first computation of dividing the value per bushel by the price per bushel of U.S. No. 2 corn for purposes of clarification.

5. **Section 10.** Add definitions for "Harvest", "Replanting", "Section", and "Silage."

On Monday, September 14, 1987, FCIC published a notice of proposed rulemaking in the *Federal Register* at 52 FR 34671, to add a new subpart, 7 CFR 401.111—Corn Endorsement, to provide the regulations containing the provisions of crop insurance protection on corn produced as grain in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule. One comment was received from the Crop Hail Insurance Actuarial Association (CHIAA) with respect to initial planting date, original planting pattern, production to count on harvested acreage, and replanting payment issues.

1. **Earliest planting date:** CHIAA proposed deletion of the earliest planting date on the basis that it affects



only the replant payment; provides that replant payment is not the same for all insureds; and that the date is not readily available to the insured. The initial planting varies widely ranging from 30 to 60 days depending on the area. FCIC considered the implications of actuarial soundness in these issues, particularly with respect to adverse selectivity. Initial planting dates were established to prevent a producer from intentionally planting early, in many cases well in advance of sales closing/cancellation, and selecting against the insurance company.

If the crop survives the early planting undamaged, the producer can choose to cancel prior to the cancellation date as the chances of a normal crop are increased when early planted. The insured thereby obtains insurance coverage during this early, high risk time at no cost. However, if the crop is damaged in the early growing period, the insured may collect a replant payment and plant the crop at the normal time, with FCIC paying the replanting costs through deduction from the premium. The variation in the dates reflect different response to early planting of various crops and weather conditions prevalent in the areas during early spring. The Corporation has determined to retain the earliest planting date.

**2. Original planting pattern:** CHIAA proposes to delete the requirement that the replanting pattern be the same as the initial planted pattern on the basis that the actuarial table does not reference planting patterns and that replanting is a salvage situation and it may not be practical to replant in the original pattern.

The Corporation has reviewed this issue. There is no requirement that the pattern of replant be the same as the original pattern. However, if the pattern of replant was uninsurable as an original pattern, the full liability is not reinstated. Although replanting is a salvage operation, reinstatement of full liability for a practice which will probably not produce the established yield raises questions as to the statutory limit on the guarantee.

**3. Replanting payment:** CHIAA takes issue with the replanting provision establishing the actual cost as the basis for replant payment in that it creates administrative difficulties. CHIAA suggests an alternative of making the replant payment 20% of the production guarantee, limited by an amount specified in the policy.

FCIC has determined not to adopt this suggestion. This issue has been raised in the past. Several private insurance companies have opposed

recommendations of a specified amount. Replanting is required in the event of loss before the final planting date (as it may be extended). The replanting payment is to reimburse the insured for his reasonable out-of-pocket expenses in replanting. It is not intended as an indemnity for loss. Both the insured and the Corporation benefit by replanting. The insured has the opportunity to harvest a normal yield. The Corporation, without further loss, will not have to pay an indemnity. No basis exists under this scheme to allow payment of more than actual expenses. The present limit on replant payments will remain.

**4. Minimum of 25% production to count on harvested acreage:** It was proposed by CHIAA that the policy language providing for a 25% minimum production to count on harvested acreage be deleted because of possible administrative difficulties. Further, CHIAA recommended that the insurable crop be limited only to varieties of corn for grain and silage, excluding silage only varieties. FCIC agrees with CHIAA's suggestion and has deleted this language. However, the Corporation will not limit insurance to only corn for grain and silage. FCIC is obligated to cover silage type corn since corn is a disaster eligible crop. The provisions of the Corn Endorsement provide coverage for corn produced as grain. If an insured wishes to produce corn as silage, the provisions of the Corn Endorsement herein plus the Corn Silage Option (7 CFR 401.112) are used for this purpose.

With the changes discussed herein, FCIC herewith adopts the rule published at 52 FR 34671 as a final rule.

Because the earliest date for filing contract changes in the service office is November 30, good cause is shown for making this rule effective in less than 30 days.

#### List of Subjects in 7 CFR Part 401

General crop insurance regulations,  
Corn endorsement.

#### Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

#### PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.111 Corn Endorsement, effective for the 1988 and Succeeding Crop Years, to read as follows:

#### § 401.111 Corn endorsement.

The provisions of the Corn Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

#### Federal Crop Insurance Corporation

#### Corn Endorsement

##### 1. Insured Crop

a. The crop insured will be field corn ("corn") planted for harvest as grain (or silage if a silage amendment is obtained).

b. In addition to the corn not insurable under section 2 of the general crop insurance policy, we do not insure any corn:

(1) On which the corn was destroyed or put to another use for the purpose of conforming with any other program administered by the United States Department of Agriculture;

(2) Unless the acreage is planted in rows far enough apart to permit mechanical cultivation; or

(3) Planted for silage unless a silage amendment has been obtained.

c. If the actuarial table for the county provides a "silage only guarantee", coverage is only available with the completion of the silage amendment.

d. A late planting agreement will be available for corn.

##### 2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;

b. Fire;

c. Insects;

d. Plant disease;

e. Wildlife;

f. Earthquake;

g. Volcanic eruption; or

h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

##### 3. Annual Premium

a. The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insurance experience through the 1983 crop year under the terms of the experience table contained in the corn policy for the 1984 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;



(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply;

(5) Participation must be continuous from prior to 1984.

#### 4. Insurance Period

The calendar date for the end of the insurance period is the date immediately following planting as follows:

(a) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof—September 30;

(b) Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Pierce, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom Counties, Washington—October 31;

(c) All other counties where our actuarial table shows:

(a) only a silage guarantee; or

(b) both a grain and a silage guarantee on any acreage of corn harvested for silage—September 30;

(d) All other counties and states—December 10.

#### 5. Unit Division

Corn acreage that would otherwise be one unit, as defined in section 17 of the general crop insured policy, may be divided into more than one unit if you agree to pay additional premium as provided for by the actuarial table and if for each proposed unit you maintain written verifiable records of planted acreage and harvested production for at least the previous crop year. Production reports by unit based on those records should be filed as early as possible but must be filed by no later than the date required by subsection 4.d. of the general crop insurance policy and either:

a. Acreage planted to the insurance corn crop is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in Florida) the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the section or ASCS Farm Serial Number are clearly identified, and the insured acreage can be easily determined; and

(2) The corn is planted in such a manner that the planting pattern does not continue into an adjacent section or ASCS Farm Serial Number; or

b. Acreage planted to the insured corn is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and non-irrigated practices are carried out, provided:

(1) Corn planted on the irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern (Nonirrigated corners of a center pivot irrigation system planted to insured corn are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine your yield for the purpose of determining the guarantee for the unit.); and

(2) Planting, fertilizing, and harvesting are carried out in accordance with recognized

good irrigated and non-irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

#### 6. Notice of Damage or Loss

For purposes of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

#### 7. Claim for Indemnity

a. An indemnity will be determined for each grain unit by:

(1) Multiplying the insured grain acreage by the production guarantee;

(2) Subtracting therefrom the total production of grain to be counted (See subsection 7.d.);

(3) Multiplying this product by the grain price election; and

(4) Multiplying this result by your share.

b. When the actuarial table provides a bushel guarantee only or a bushel and tonnage guarantee (and you do not have a timely signed silage amendment) all appraisals will be made in bushels.

c. When the actuarial table provides a tonnage guarantee, and a corn silage amendment is in effect, the indemnity will be determined in accordance with the procedure shown in the corn silage amendment.

d. The total production (bushels) to be counted for a unit with a grain guarantee will include:

(1) All harvested production and may be adjusted for moisture or quality as follows:

(a) Mature grain which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 15.5 through 30.0 percent and .2 percent for each .1 percentage point of moisture from 30.1 through 40.0 percent; or

(b) Mature grain which, due to insurable causes, has moisture over 40 percent; test weight below 40 pounds per bushel; or kernel damage more than 15 percent as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act, will be adjusted by:

(1) Dividing the value per bushel of such corn by the price per bushel of U.S. No. 2 corn at 15.5% moisture; and

(2) Multiplying the result by the number of bushels of such corn.

The applicable price for No. 2 corn will be the local market price on the earlier of the day the loss is adjusted or the day such corn was sold.

(2) All appraised production which will include:

(a) Unharvested production on harvested acreage and potential production lost due to an uninsured cause and failure to follow recognized good corn farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Appraised production on unharvested acreage;

(d) For any acreage of corn reported as grain and harvested as silage, indemnity calculations will be converted to a bushel basis at the conversion rate shown in the form FCI-35 for silage harvested or appraised from a grain variety.

(e) Appraised production on insured acreage for which we have given written consent to be put to another use unless such acreage is:

(i) Not put to another use before harvest of corn becomes general in the county and reappraised by us;

(ii) Further damaged by an insured cause and reappraised by us; or

(iii) Harvested.

e. A replanting payment is available under this endorsement. The replanting payment will not exceed 8 bushels multiplied by the price election, multiplied by your share. When the crop is replanted by a practice that was uninsurable as an original planting, any indemnity will be reduced by the amount of the replanting payment.

#### 8. Cancellation and Termination Dates.

State and county	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	February 15
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas Counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	March 31
All other Texas counties and all other states....	April 15

#### 9. Contract Changes

Contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date and by November 30 preceding the cancellation date for all other counties.

#### 10. Meaning of Terms

a. "Harvest" of corn for grain on the unit means completion of combining or picking the corn for grain.

b. "Replanting" means performing the cultural practice necessary to replant insured acreage to corn.

c. "Section" means a unit of measure under the rectangular survey system describing a tract of land generally one mile square, usually containing approximately 640 acres.

d. "Silage" means corn harvested by severing the stalk from the land and chopping the stalk and the ear for the purpose of livestock feed.



Done in Washington, DC, on November 12, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-27047 Filed 11-24-87; 8:45 am]

BILLING CODE 3410-08-M

## 7 CFR Part 401

[Amdt. No. 2; Doc. No. 4923S]

### General Crop Insurance Regulations; Corn Silage Option

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section, 7 CFR 401.112 to be known as the Corn Silage Option. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection on corn on an optional silage basis in an amendment to the Corn Crop Insurance Endorsement (7 CFR 401.111). The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

**EFFECTIVE DATE:** November 30, 1987.

#### FOR FURTHER INFORMATION CONTACT:

Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not

increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith adds to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.112, the Corn Silage Option, effective for the 1988 and succeeding crop years, to provide the provisions for insuring corn on an optional silage basis.

The present silage provision contained in 7 CFR Part 432 will be terminated at the end of the 1987 crop year and later removed and reserved. FCIC will amend the title of 7 CFR Part 432 by separate document.

Minor editorial changes have been made to improve compatibility with the new corn endorsement. These changes do not affect meaning or intent of the provisions. In adding the new Corn Silage Option to 7 CFR Part 401 as outlined below, no changes were made to the provisions for insuring corn as silage.

FCIC herewith adds to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.112, the Corn Silage Option, effective for the 1988 and succeeding crop years, to provide the provisions for insuring corn on an optional silage basis.

On Monday, September 14, 1987, FCIC published a notice of proposed rulemaking in the *Federal Register* at 52 FR 34673, to add a new subpart, 7 CFR 401.112—Corn Silage Option, to provide the regulations containing the provisions of crop insurance protection on corn produced on a silage basis as an option to the corn endorsement. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule. One comment was received from the Crop Hail Insurance

Actuarial Association (CHIAA) with respect to initial planting date, original planting pattern, and replanting payment issues.

1. *Earliest planting date:* CHIAA proposed deletion of the earliest planting date on the basis that it affects only the replant payment; provides that replant payment is not the same for all insureds; and that the date is not readily available to the insured. The initial planting varies widely ranging from 30 to 60 days depending on the area. FCIC considered the implications of actuarial soundness in these issues, particularly with respect to adverse selectivity. Initial planting dates were established to prevent a producer from intentionally planting early, in many cases well in advance of sales closing/cancellation, and selecting against the insurance company.

If the crop survives the early planting undamaged, the producer can choose to cancel prior to the cancellation date as the chances of a normal crop are increased when early planted. The insured thereby obtains insurance coverage during this early, high risk time at no cost. However, if the crop is damaged in the early growing period, the insured may collect a replant payment and plant the crop at the normal time, with FCIC paying the replanting costs through deduction from the premium. The variation in the dates reflect different response to early planting of various crops and weather conditions prevalent in the areas during early spring. The Corporation has determined to retain the earliest planting date.

2. *Original planting pattern:* CHIAA proposes to delete the requirement that the replanting pattern be the same as the initial planted pattern on the basis that the actuarial table does not reference planting patterns and that replanting is a salvage situation and it may not be practical to replant in the original pattern.

The Corporation has reviewed this issue. There is no requirement that the pattern of replant be the same as the original pattern. However, if the pattern of replant was uninsurable as an original pattern, the full liability is not reinstated. Although replanting is a salvage operation, reinstatement of full liability for a practice which will probably not produce the established yield raises questions as to the statutory limit on the guarantee.

3. *Replanting payment:* CHIAA takes issue with the replanting provision establishing the actual cost as the basis for replant payment in that it creates



administrative difficulties. CHIAA suggests an alternative of making the replant payment 20% of the production guarantee, limited by an amount specified in the policy. FCIC has determined not to adopt this suggestion. This issue has been raised in the past. Several private insurance companies have opposed recommendations of a specified amount. Replanting is required in the event of loss before the final planting date (as it may be extended). The replanting payment is to reimburse the insured for his reasonable out-of-pocket expenses in replanting. It is not intended as an indemnity for loss. Both the insured and the Corporation benefit by replanting. The insured has the opportunity to harvest a normal yield. The Corporation, without further loss, will not have to pay an indemnity. No basis exists under this scheme to allow payment of more than actual expenses. The present limit on replant payments will remain.

In consideration of the above, FCIC adopts the rule published at 52 FR 34673 as a final rule.

Because the earlier data for filing contract changes in the service office is November 30, good cause is shown for making this rule effective in less than 30 days.

#### List of Subjects in 7 CFR Part 401

General crop insurance regulations, Corn silage option.

#### Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, in the following instances:

#### PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

**Authority:** Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.112 Corn Silage Option, effective for the 1988 and Succeeding Crop Years, to read as follows:

#### § 401.112 Corn silage option.

The provisions of the Corn Silage Crop Insurance Option to the Corn Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

#### Federal Crop Insurance Corporation

##### Corn Silage Option

Insured's Name	Contract No.
Address	Crop Year
	Identification No.
SSN	Tax

Upon our approval, this amendment is applicable for the 1988 and succeeding crop years.

1. You must have a corn endorsement in force. The corn endorsement provides guaranteed protection on a bushel basis for corn harvested as grain only.

2. All provisions of the corn endorsement not in conflict with this option remain applicable. If a conflict exists between the terms of the endorsement and this silage option, the terms of the silage option apply.

3. A properly executed Corn Silage Option must be submitted to us on or before the sales closing date if you wish to insure your corn as silage under this option.

4. The silage option remains in force and need not be renewed annually. If you desire to cancel the option, you must do so in writing by the cancellation date shown in the actuarial table. The silage option is mandatory if required by the actuarial table.

5. Failure to submit a properly executed silage option by the sales closing date will result in all your corn being insured under the terms and conditions of the corn endorsement.

6. All production and appraisals under this option will be in tons. When the corn is harvested as silage and a grain appraisal is made concurrently with a silage appraisal, and the grain/silage appraisal is less than 4.5 bushels per ton, the production will be reduced 1 percent for each 1 tenth of a bushel below 4.5 bushels. The representative sample required by subsection 8.a(3) of the general policy must be at least 10 feet wide and the entire length of the field. If a representative sample is not left unharvested, no reduction for harvested silage will be allowed.

7. If the actuarial table shows both a grain and silage guarantee, and the normal silage harvesting period has ended, we may increase any tonnage appraisal or any harvested silage production to 65 percent moisture equivalent to reflect the normal moisture content of silage harvested during the normal silage harvesting period.

8. A replanting payment will be available in accordance with subsection 9.h. of the general policy if it is practical to replant. The payment will not exceed 1 ton, multiplied by the price election, multiplied by your share.

Your premium rate under this option is that specified for silage corn on the actuarial table. If only one premium rate is shown by the actuarial table it will be applied to both grain and silage. Mixtures of corn and grain sorghum are insurable for silage only if the sorghum does not exceed 20 percent of the stand.

The end of the insurance period under the silage option is September 30 for the crop year. The silage option is not available in corn counties which offer coverage only on a bushel basis.

Insured's Signature	(Date)
Agent's Signature	(Date)
Approved by Company	(Date)

Done in Washington, DC, on November 13, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-27048 Filed 11-24-87; 8:45 am]

BILLING CODE 3410-08-M

#### 7 CFR Part 401

[Amdt. No. 11; Doc. No. 48825]

#### General Crop Insurance Regulations; ELS Cotton Endorsement

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section, 7 CFR 401.121, to be known as the Extra Long Staple (ELS) Cotton Endorsement. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection on ELS cotton in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

**EFFECTIVE DATE:** November 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as October 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or



local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith adds to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.121, the ELS Cotton Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring extra long staple cotton.

The provisions for insuring ELS cotton contained in 7 CFR 401.121 will supersede those provisions contained in 7 CFR Part 448, the ELS Cotton Crop Insurance Regulations, effective with the beginning of the 1988 crop year. The present policy contained in 7 CFR Part 448 will be terminated at the end of the 1987 crop year and later removed and reserved. FCIC will amend the title of 7 CFR Part 448 by separate document so that the provisions therein are effective only through the 1987 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new ELS Cotton Endorsement to 7 CFR Part 401, FCIC makes other changes in the provisions for insuring ELS cotton as follows:

1. *Section 1.* Add a provision indicating that cotton destroyed to comply with other U.S. Department of Agriculture programs will not be insured. This provision was added to prevent insurance from attaching to a

crop that is destroyed or intended for destruction to comply with other U.S.D.A. programs.

2. *Section 5.* Add unit division to exclude unit division by share.

3. *Section 7.* Add provisions providing for harvested-unharvested guarantees replacing stage guarantees. This change was made due to the administrative problems encountered in determining in which stage damage occurs and whether farmers in the area generally would further care for the crop.

Upon further review by FCIC of the ELS Cotton Endorsement the following changes were made. These changes are considered by FCIC as non-substantive in that one clarifies skip row acreage, another relieves a restriction to allow small grain planted between rows for erosion control. The changes are as follows:

Sections 1 and 10 have been changed to clarify skip row acreage determination and to specifically state that skip-row yield factors are not applicable if non-cotton rows are planted with another crop.

Section 1 has an added provision to allow small grains planted between cotton rows for erosion control (the general crop insurance policy does not allow insurance for cotton planted with another crop).

On Tuesday, September 15, 1987, FCIC published a notice of proposed rulemaking in the *Federal Register* at 52 FR 34809, to add a new subpart, 7 CFR 401.121—ELS Cotton Endorsement, to provide the regulations containing the provisions of crop insurance protection on ELS cotton in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule.

A total of seven comments were received; two from Grower Associations, four from insurance companies under contract with FCIC, and one from the Crop Hail Insurance Actuarial Association.

The comments dealt with two proposed changes: addition of harvested/unharvested guarantees replacing previous stage guarantees; and inclusion of unit division provisions to modify the unit definition in the general crop insurance policy to exclude unit division by share.

1. *Earliest planting date:* CHIAA proposed deletion of the earliest planting date on the basis that it affect only the replant payment; provides that replant payment is not the same for all insureds; and that the date is not readily available to the insured. The initial

planting varies widely ranging from 30 to 60 days depending on the area. FCIC considered the implications of actuarial soundness in these issues, particularly with respect to adverse selectivity. Initial planting dates were established to prevent a producer from intentionally planting early, in many cases well in advance of sales closing/cancellation, and selecting against the insurance company.

If the crop survives the early planting undamaged, the producer can choose to cancel prior to the cancellation date as the chances of a normal crop are increased when early planted. The insured thereby obtains insurance coverage during this early, high risk time at no cost. However, if the crop is damaged in the early growing period, the insured may collect a replant payment and plant the crop at the normal time, with FCIC paying the replanting costs through deduction from the premium. The variation in the dates reflect different response to early planting of various crops and weather conditions prevalent in the areas during early spring. The Corporation has determined to retain the earliest planting date.

2. *Original planting pattern:* CHIAA proposes to delete the requirement that the replanting pattern be the same as the initial planted pattern on the basis that the actuarial table does not reference planting patterns and that replanting is a salvage situation and it may not be practical to replant in the original pattern.

The Corporation has reviewed this issue. There is no requirement that the pattern of replant be the same as the original pattern. However, if the pattern of replant was uninsurable as an original pattern, the full liability is not reinstated. Although replanting is a salvage operation, reinstatement of full liability for a practice which will probably not produce the established yield raises questions as to the statutory limit on the guarantee.

3. *Replanting payment:* CHIAA takes issue with the replanting provision establishing the actual cost as the basis for replant payment in that it creates administrative difficulties. CHIAA suggests an alternative of making the replant payment 20% of the production guarantee, limited by an amount specified in the policy.

FCIC has determined not to adopt this suggestion. This issue has been raised in the past. Several private insurance companies have opposed recommendations of a specified amount. Replanting is required in the event of loss before the final planting date (as it



may be extended). The replanting payment is to reimburse the insured for his reasonable out-of-pocket expenses in replanting. It is not intended as an indemnity for loss. Both the insured and the Corporation benefit by replanting. The insured has the opportunity to harvest a normal yield. The Corporation, without further loss, will not have to pay an indemnity. No basis exists under this scheme to allow payment of more than actual expenses. The present limit on replant payments will remain.

4. Minimum of 25% production to count on harvested acreage: It was proposed that the definition of "harvest", providing for a 25% minimum production to count on harvested acreage be deleted because of the possibility of misunderstanding in light of the provisions of the Federal Crop Insurance Act, as amended, which provide for coverage of 75 percent of the recorded or appraised average yield. The proposed 25% production to count is interpreted as a deductible of 25% of the guarantee. FCIC agrees with the suggestion and has deleted the reference language.

5. *Harvested/unharvested guarantees replacing previous stage guarantees:* FCIC has determined that there is no basis for continuing cotton insurance based on stage guarantees. Many administrative problems were encountered in attempting to determine in which stage damage occurred and whether farmers in an area generally would not further care for the crop. The proposed rule was based on unharvested and harvested guarantees. The principle objection in all comments was to the provision that appraised production will include not less than 25% of all unharvested acreage. All comments appeared to interpret this provision as being out of compliance with the Federal Crop Insurance Act, as amended, because 75% coverage is not available for unharvested acreage.

The intent of this provision was to discourage replanting of a crop when it is too late to expect cotton to reach maturity. FCIC agrees that the proposed provision seemed in conflict with the Act and changed this section to include in the appraised production to count not less than 25% of the production guarantee per acre for any acreage of cotton that is immature when we determine that harvest of cotton becomes general in the county. FCIC has also changed the meaning of "harvest" to delete the requirement that at least 25% of the per acre production guarantee be removed.

6. *Inclusion of unit division provisions to modify the unit definition in the general crop insurance policy to exclude*

*unit division by share:* One insurance company, commenting that the unit provision for cotton represented no change, recommended that unit definition be the same as for other disaster crops. FCIC agrees that the unit division is unchanged from that in effect last year. Further, FCIC does not contemplate changing the unit division for cotton to conform to other crops because of previous insuring experience. Since yield records are kept by farm serial number, further unit division would result in adverse insuring experience. The recommendation is not adopted.

With the considerations noted above, FCIC herewith adopts the rule published at 52 FR 34809 as a final rule.

Because the earliest date for filing contract changes in the service office is November 30, good cause is shown for making this rule effective in less than 30 days.

#### List of Subjects in 7 CFR Part 401

General crop insurance regulations,  
ELS cotton endorsement.

#### Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

#### PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.121 ELS Cotton Endorsement, effective for the 1988 and Succeeding Crop Years, to read as follows:

#### § 401.121 ELS cotton endorsement.

The provisions of the ELS Cotton Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

#### Federal Crop Insurance Corporation

#### Extra Long Staple Cotton Endorsement

#### 1. Insured Crop and Acreage

a. The crop insured will be Extra Long Staple cotton ("ELS") and American Upland lint cotton ("AUP") if the acreage was first planted in the crop year to ELS cotton.

b. The acreage of skip-row cotton insured will be the acreage occupied by the rows of cotton after eliminating the skipped-row portions.

c. In addition to the cotton not insurable in section 2 of the general crop insurance policy, we do not insure any cotton:

- (1) which is not irrigated if it is grown:
- (a) Where a hay crop was harvested in the same calendar year; or
- (b) Where a small grain crop reached the heading stage in the same calendar year;
- (2) Planted in excess of the acreage limitations applicable to the farm by any program administered by the United States Department of Agriculture; or
- (3) Destroyed, designated to be destroyed, or put to another use in order to comply with other United States Department of Agriculture programs.

d. In lieu of subsection 2.e.(7) of the general crop insurance policy, we do not insure any crop planted with another spring planted crop.

e. A late planting agreement is available.

#### 2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

- a. Adverse weather conditions;
- b. Fire;
- c. Insects;
- d. Plant disease;
- e. Wildlife;
- f. Earthquake;
- g. Volcanic eruption; or
- h. Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

#### 3. Annual Premium

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

#### 4. Insurance Period

a. In lieu of subsection 7.(b) of the general crop insurance policy, (harvest of the unit) insurance will end upon removal of the cotton from the field.

b. The calendar date for the end of the insurance period is January 31.

#### 5. Unit Division

a. In lieu of subsections 17.q.(1) and 17.q.(2) of the general crop insurance policy, a unit will be all insurable acreage of cotton in the county in which you have an insured share and which is identified by a single ASCS Farm Serial Number at the time insurance first attaches for the crop year.

b. We may reject or modify any ASCS reconstitution for the purpose of FCIC unit definition if the reconstitution was in whole or in part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy.

c. If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between units will cause those units to be combined.

#### 6. Notice of Damage or Loss

In addition to the provisions in section 8 of the general crop insurance policy:



a. You may not destroy any cotton on which an indemnity will be claimed until we give consent.

b. You must give us notice if you are going to replant any acreage originally planted to ELS cotton to AUP cotton.

c. For purposes of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

#### 7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of cotton to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

b. The total production to be counted for a unit will include all harvested and appraised production.

(1) Any mature ELS cotton production will be reduced when, due solely to insured causes, the quality of the ELS cotton produced is such that the price quotation for ELS cotton of like grade, staple length, and micronaire reading (price A) is less than 75 percent of price B. Price B is defined as the market price quotation for ELS cotton of the grade, staple length, and micronaire reading designated in the actuarial table for this purpose. The price quotations for prices A and B will be the market price quotations at the recognized market closest to the unit on the earlier of the day the loss is adjusted or the day the damaged ELS cotton is sold. In the absence of a price quotation on such date, the price quotations for the nearest prior date for which an ELS cotton price quotation was listed for both prices A and B will be used. The pounds of production to be counted will be determined by multiplying the number of pounds of mature production by price A and dividing the result by 75 percent of price B.

(2) Any AUP cotton harvested from acreage originally planted to ELS cotton in the same growing season will be reduced by the factor obtained by dividing the price of the AUP cotton by the price of ELS cotton of the grade, staple length, and micronaire reading shown in our actuarial table. The prices will be determined at the closest recognized market to the insured unit on the earlier of the date the loss is adjusted or the date the AUP cotton was sold.

(3) Appraised production to be counted will include:

(a) Mature and potential production on unharvested acreage;

(b) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good cotton farming practices;

(c) Not less than the applicable guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(d) Not less than 25 percent of the production guarantee per acre for any acreage of cotton that is immature when we

determine that harvest of cotton becomes general in the county.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of cotton becomes general in the county and is reappraised by us;

(b) Further damaged by an insured cause and is reappraised by us; or

(c) harvested.

(5) Any appraisal of the AUP cotton on acreage originally planted to ELS cotton will be reduced by the factor determined in section 7.b.(2) above. If prices are not yet available, the previous year's season average price will be used.

(6) The cotton stalks must not be destroyed on any acreage for which an indemnity is claimed, until we give consent. An appraisal of not less than the guarantee may be made on acreage where the stalks have been destroyed without our consent.

#### 8. Cancellation and Termination Dates

The cancellation and termination dates are:

States	Cancellation and termination dates
New Mexico .....	April 15.
All other states .....	March 31.

#### 9. Contract Changes

The date by which contract changes will be available in your service office is November 30 preceding the cancellation date.

#### 10. Meaning of Terms

a. "Cotton" means Extra Long Staple cotton and acreage replanted to American Upland Cotton after ELS was destroyed by an insured cause.

b. "County" means the land defined in the general crop insurance policy and any land identified by an ASCS Farm Serial Number for the county but physically located in another county.

c. "ELS Cotton" means Extra Long Staple cotton (also called Pima Cotton and American-Egyptian Cotton).

d. "Harvest" means the removal of the seed cotton on each acre from the open cotton boll or the severance of the open cotton boll from the stalk by either manual or mechanical means.

e. "Mature cotton" means ELS cotton which can be harvested either manually or mechanically and will include both unharvested and harvested cotton.

f. "Replanted" means performing the cultural practices necessary to replant acreage to AUP cotton after ELS cotton was destroyed by an insured cause in the same growing season.

g. "Skip-row" means planting patterns consisting of alternating rows of cotton and fallow rows as defined by ASCS (if non-cotton rows are occupied by another crop any yield factor normally applied for skip-row cotton will not be applicable.)

Done in Washington, DC, on November 13, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-27049 Filed 11-24-87; 8:45 am]

BILLING CODE 3410-08-M

#### 7 CFR Part 401

[Amdt. No. 3; Doc. No. 4924S]

#### General Crop Insurance Regulations; Grain Sorghum Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section, 7 CFR 401.113 to be known as the Grain Sorghum Endorsement. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection on grain sorghum in an endorsement to the General Crop Insurance policy which contains the standard terms and conditions common to most crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

**EFFECTIVE DATE:** November 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as July 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not



increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith adds to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.113, the Grain Sorghum Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring grain sorghum.

The provisions for insuring grain sorghum contained in 7 CFR 401.113 supersede those provisions for insuring grain sorghum contained in 7 CFR Part 420, the Grain Sorghum Crop Insurance Regulations, effective beginning with the 1988 crop year. The present policy contained in 7 CFR Part 420 will be terminated at the end of the 1987 crop year and later removed and reserved. FCIC will amend the title of 7 CFR Part 420 by separate document so that the provisions therein are effective only through the 1987 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Grain Sorghum Endorsement to 7 CFR Part 401 as outlined below, FCIC makes changes in the provisions for insuring grain sorghum.

1. *Section 1.* Add a provision indicating that grain sorghum destroyed to comply with other U.S. Department of Agriculture programs will not be insured. This provision was added to prevent insurance from attaching to the crop intended for destruction to comply with other U.S. Department of Agriculture programs.

2. The General Policy provides that insurance will begin on each unit or portion of a unit. This change avoids instances when delayed planting of part of a unit until after the final planting

date prevents insurance from attaching on timely planted acreage.

3. *Section 5.* Add unit division guidelines and add a clause to specify that division of units may result in the insured paying additional premium for guideline unit division in accordance with actuarial studies which show an increased risk when units are divided. Add language to specify that nonirrigated corners of a center pivot irrigation system are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine the unit yield for the purpose of determining the guarantee for the unit.

5. *Section 10.* Add definitions for "Harvest", and "Section."

On Monday, September 14, 1987, FCIC published a notice of proposed rulemaking in the Federal Register at 52 FR 34663, to add a new subpart, 7 CFR 401.113—Grain Sorghum Endorsement, to provide the regulations containing the provisions of crop insurance protection on grain sorghum in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule.

One comment was received from the Crop Hail Actuarial Association (CHIAA) with respect to initial planting date, originating planting pattern, and replanting payment issues. These issues were addressed by FCIC, as follows:

1. *Earliest planting date:* CHIAA proposed deletion of the earliest planting date on the basis that it affects only the replant payment; provides that replant payment is not the same for all insureds; and that the date is not readily available to the insured. The initial planting varies widely ranging from 30 to 60 days depending on the area. FCIC considered the implications of actuarial soundness in these issues, particularly with respect to adverse selectivity. Initial planting dates were established to prevent a producer from intentionally planting early, in many cases well in advance of sales closing/cancellation, and selecting against the insurance company.

If the crop survives the early planting undamaged, the producer can choose to cancel prior to the cancellation date as the chances of a normal crop are increased when early planted. The insured thereby obtains insurance coverage during this early, high risk time at no cost. However, if the crop is damaged in the early growing period, the insured may collect a replant payment and plant the crop at the normal time, with FCIC paying the

replanting costs through deduction from the premium.

The variation in the dates reflect different response to early planting of various crops and weather conditions prevalent in the areas during early spring. The Corporation has determined to retain the earliest planting date.

2. *Original planting pattern:* CHIAA proposes to delete the requirement that the replanting pattern be the same as the initial planted pattern on the basis that the actuarial table does not reference planting patterns and that replanting is a salvage and it may not be practical to replant in the original pattern.

The Corporation has reviewed this issue. There is no requirement that the pattern of replant be the same as the original pattern. However, if the pattern of replant was uninsurable as an original pattern, the full liability is not reinstated. Although replanting is a salvage operation, reinstatement of full liability for a practice which will probably not produce the established yield raises questions as to the statutory limit on the guarantee.

3. *Replanting payment:* CHIAA takes issue with the replanting provision establishing the actual cost as the basis for replant payment in that it creates administrative difficulties. CHIAA suggests an alternative of making the replant payment 20% of the production guarantee, limited by an amount specified in the policy. FCIC has determined not to adopt this suggestion. This issue has been raised in the past. Several private insurance companies have opposed recommendations of a specified amount. Replanting is required in the event of loss before the final planting date (as it may be extended). The replanting payment is to reimburse the insured for his reasonable out-of-pocket expenses in replanting. It is not intended as an indemnity for loss. Both the insured and the Corporation benefit by replanting. The insured has the opportunity to harvest a normal yield. The Corporation, without further loss, will not have to pay an indemnity. No basis exists under this scheme to allow payment of more than actual expenses. The present limit on replant payments will remain.

4. CHIAA believes that the proposed definition of harvest including the reference to removal from the field was in error. FCIC agrees and has changed the definition.

5. CHIAA proposed language to provide that insurance would not attach to acreage where the grain sorghum seed was not mechanically incorporated into the soil in rows during the planting



process, and to further require that grain sorghum seed planted be expected to reach maturity prior to the frost date. FCIC does not adopt these suggestions. Broadcast Grain Sorghum is an acceptable practice and incorporation should be required, however, this crop is also a disaster eligible crop and as such FCIC is obligated to offer insurance on it. The final planting date for each variety is set so as to preclude an insured planting a long maturity type late in the season to collect an indemnity.

In consideration of the above comments, FCIC adopts the rule published at 52 FR 34663 as a final rule.

Because the earliest date for filing contract changes in the service office is November 30, good cause is shown for making this rule effective in less than 30 days.

#### List of Subjects in 7 CFR Part 401

General crop insurance Regulations, Grain sorghum endorsement.

#### Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

#### PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.113 Grain Sorghum Endorsement, effective for the 1988 and Succeeding Crop Years, to read as follows:

#### § 401.113 Grain sorghum endorsement.

The provisions of the Grain Sorghum Crop Insurance Endorsement for the 1988 and subsequent crop year are as follows:

#### Federal Crop Insurance Corporation

##### Grain Sorghum Endorsement

#### 1. Insured Crop

a. The crop insured will be combine type hybrid grain sorghum planted for harvest as grain.

b. In addition to the grain sorghum not insurable in section 2 of the general crop insurance policy, we do not insure any grain sorghum, which was destroyed or put to another use for the purpose of conforming with any other program administered by the United States Department of Agriculture.

c. A late planting agreement will be available for all grain sorghum.

#### 2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

- Adverse weather conditions;
- Fire;
- Insects;
- Plant disease;
- Wildlife;
- Earthquake;
- Volcanic eruption; or
- If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

#### 3. Annual Premium

a. The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insurance experience through the 1983 crop year under the terms of the experience table contained in the grain sorghum policy in effect for the 1984 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

- No premium reduction will be retained after the 1989 crop year;
- The premium reduction amount will not increase because of favorable experience;
- The premium reduction amount will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;
- Once the loss ratio exceeds .80, no further premium reduction will apply; and
- Participation must be continuous from at least prior to the 1984 crop year.

#### 4. Insurance Period

The calendar date for the end of the insurance period is the date immediately following planting as follows: (a) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties south thereof: September 30. (b) All other Texas counties and all other States: December 10.

#### 5. Unit Division

Grain sorghum acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as provided for by the actuarial table and if for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year. Production reports by unit based on those records should be filed as early as possible but must be filed by no later than the date required by subsection 4.d. of the general crop insurance policy and either:

a. Acreage planted to the insured grain sorghum crop is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in Florida) the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the section or ASCS Farm Serial Number are clearly identified, and the insured acreage can be easily determined; and

(2) The grain sorghum is planted in such a manner that the planting pattern does not continue into an adjacent section or ASCS Farm Serial Number; or

b. The acreage planted to the insured grain sorghum is located in a single section or ASCS Farm Serial Number and consists of acreage on which both irrigated and non-irrigated practices are carried out, provided:

(1) Grain sorghum planted on the irrigated acreage does not continue into non-irrigated acreage in the same rows or planting pattern (Non-irrigated corners of a center pivot irrigation system planted to insurable grain sorghum are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine the unit yield for the purpose of determining the guarantee for the unit.); and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good irrigated and non-irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

#### 6. Notice of Damage or Loss

For the purpose of section 8 of the general crop insurance policy, representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

#### 7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

- Multiplying the insured acreage by the production guarantee;
- Subtracting therefrom the total production of grain sorghum to be counted (see subsection 7.d.);
- Multiplying the remainder by your price election; and
- Multiplying this result by your share.

b. The total production (bushels) to be counted for a unit will include:

- All harvested production which may be adjusted for moisture and quality as follows:
  - Mature grain sorghum production which is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 14.0 percent; or
  - Mature grain sorghum production which, due to insurable causes has a test weight of less than 51 pounds per bushel or contains more than 15.0 percent kernel damage, as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act, will be adjusted by:
    - Dividing the value per bushel of the insured grain sorghum by the price per bushel of U.S. No. 2 grain sorghum; and
    - Multiplying the result by the number of bushels of insured grain sorghum.

The applicable price for No. 2 grain sorghum will be the local market price on the earlier of the day the loss is



adjusted or the day the insured grain sorghum is sold; and

(2) All appraised production which will include:

(a) Unharvested production on harvested acreage and potential production lost due to an uninsured cause and failure to follow recognized good grain sorghum farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Appraised production on unharvested acreage;

(d) Appraised production on insured acreage for which we have given written consent to be put to another use unless such acreage is:

(i) Not put to another use before harvest of grain sorghum becomes general in the county and reappraised by us;

(ii) Further damaged by an insured cause and reappraised by us; or

(iii) Harvested.

c. A replanting payment is available under this endorsement. The replanting payment per acre will not exceed 7 bushels multiplied by the price election, multiplied by your share. When the crop is replanted by a practice that was uninsurable as an original planting, any indemnity will be reduced by the amount of the replant payment.

#### 8. Cancellation and Termination Dates

State and County	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties south thereof.	Feb. 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	Mar. 31.
All other Texas counties and all other States.	Apr. 15.

#### 9. Contract Changes

Contract changes will be available at your service office by December 31 prior to the cancellation date for counties with an April 15 cancellation date and by November 30 prior to the cancellation date for all other counties.

#### 10. Meaning of Terms

a. "Harvest" means the completion of combining or threshing of grain sorghum on the unit.

b. "Replacing" means performing the cultural practice necessary to replant insured acreage to corn.

c. "Section" means a unit of measure under the rectangular survey system describing a tract of land generally one mile square, usually containing approximately 640 acres.

Done in Washington, DC, on November 12, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-27050 Filed 11-24-87; 8:45 am]

BILLING CODE 3410-08-M

#### 7 CFR Part 401

[Amdt. No. 7; Doc. No. 4911S]

#### General Crop Insurance Regulations; Soybean Endorsement

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section, 7 CFR 401.117, to be known as the Soybean Endorsement. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection on soybeans in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

**EFFECTIVE DATE:** November 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as October 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not

increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith adds to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.117, the Soybean Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring soybeans.

The provisions for insuring soybeans contained in 7 CFR 401.117 will supersede those provisions contained in 7 CFR Part 431, and Soybean Crop Insurance Regulations, effective with the beginning of the 1988 crop year. The present policy contained in 7 CFR Part 431 will be terminated at the end of the 1987 crop year and will later be removed and reserved. FCIC will amend the title of 7 CFR Part 431 by separate document so that the provisions therein are effective only through the 1987 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Soybean Endorsement to 7 CFR Part 401, FCIC makes other changes in the provisions for insuring soybeans as follows:

1. **Section 4.** Provide that insurance will begin on each unit or portion of a unit. This change is made to avoid instances when delayed planting of part of a unit until after the final planting date would prevent insurance from attaching on timely planted acreage.

The end of insurance period for several Southeastern states is changed to December 31 of actuarial reasons.

2. **Section 5.** Add unit division guidelines and add a clause to specify that division of units may result in the insured paying additional premium for



guideline unit division in accordance with actuarial studies which show an increase risk when units are divided. States having unit division restrictions are added to this section. These states were previously shown on the actuarial table.

Add language to specify that non-irrigated corners of a center pivot irrigation system are part of the irrigated unit. The production from the total unit, both irrigated and non-irrigated, is combined to determine the unit yield for the purpose of determining the guarantee for the unit.

3. *Section 7.* Change the threshold for quality adjustment due to excess moisture from 14 percent to 13 percent.

4. *Section 10.* Add definitions for "Harvest", "Replant", "Section", and "Silage."

On Monday, September 14, 1987, FCIC published a notice of proposed rulemaking in the *Federal Register* at 52 FR 34667, to add a new 7 CFR 401.117—Soybean Endorsement, to provide the regulations containing the provisions of crop insurance protection on soybeans in an endorsement to the general crop insurance policy. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule. One comment was received from the Crop Hail Insurance Actuarial Association (CHIAA) with respect to initial planting date, original planting pattern, and replanting payment issues.

1. *Earliest planting date:* CHIAA proposed deletion of the earliest planting date on the basis that it affects only the replant payment; provides that replant payment is not the same for all insureds; and that the date is not readily available to the insured. The initial planting varies widely ranging from 30 to 60 days depending on the area.

FCIC considered the implications of actuarial soundness in these issues, particularly with respect to adverse selectivity. Initial planting dates were established to prevent a producer from intentionally planting early, in many cases well in advance of sales closing/cancellation, and selecting against the insurance company.

If the crop survives the early planting undamaged, the producer can choose to cancel prior to the cancellation date as the chances of a normal crop are increased when early planted. The insured thereby obtains insurance coverage during this early, high risk time at no cost. However, if the crop is damaged in the early growing period, the insured may collect a replant payment and plant the crop at the normal time, with FCIC paying the

replanting costs through deduction from the premium.

The variation in the dates reflect different response to early planting of various crops and weather conditions prevalent in the areas during early spring. The Corporation has determined to retain the earliest planting date.

2. *Original planting pattern:* CHIAA proposes to delete the requirement that the replanting pattern be the same as the initial planted pattern on the basis that the actuarial table does not reference planting patterns and that replanting is a salvage situation and it may not be practical to replant in the original pattern.

The Corporation has reviewed this issue. There is no requirement that the pattern of replant be the same as the original pattern. However, if the pattern of replant was uninsurable as an original pattern, the full liability is not reinstated. Although replanting is a salvage operation, reinstatement of full liability for a practice which will probably not produce the established yield raises questions as to the statutory limit on the guarantee.

3. *Replanting payment:* CHIAA takes issue with the replanting provision establishing the actual cost as the basis for replant payment in that it creates administrative difficulties. CHIAA suggests an alternative of making the replant payment 20% of the production guarantee, limited by an amount specified in the policy.

FCIC has determined not to adopt this suggestion. This issue has been raised in the past. Several private insurance companies have opposed recommendations of a specified amount. Replanting is required in the event of loss before the final planting date (as it may be extended). The replanting payment is to reimburse the insured for his reasonable out-of-pocket expenses in replanting. It is not intended as an indemnity for loss. Both the insured and the Corporation benefit by replanting. The insured has the opportunity to harvest a normal yield. The Corporation, without further loss, will not have to pay an indemnity. No basis exists under this scheme to allow payment of more than actual expenses. The present limit on replant payments will remain.

4. CHIAA points to an apparent discrepancy in the proposed rule for soybeans. The summary of changes lists the end of insurance period in some states as December 31, while the policy lists the date as December 20 and 31. The correct dates are as listed in the policy.

5. The definition of harvest in the proposed rule included removal of the soybeans from the field. CHIAA pointed

out this discrepancy. FCIC has changed the definition accordingly.

FCIC, after consideration of the above comments herewith adopts the proposed rule published at 52 FR 34667 as a final rule.

Because the earliest data for filing contract changes in the service office is November 30, good cause is shown for making this rule effective in less than 30 days.

#### List of Subjects in 7 CFR Part 401

General crop insurance regulations; Soybean endorsement.

#### Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

#### PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.117 Soybean Endorsement, effective for the 1988 and Succeeding Crop Years, to read as follows:

#### § 401.117 Soybean endorsement.

The provisions of the Soybean Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

#### Federal Crop Insurance Corporation

##### Soybean Endorsement

#### 1. Insured Crop

- The crop insured will be soybeans planted for harvest as beans.
- In addition to the soybeans not insurable under section 2 of the general crop insurance policy, we do not insure any soybeans if the seed has not been mechanically incorporated into the soil in rows during the planting process unless another method is specifically allowed by the actuarial table.
- A late planting agreement will be available for soybeans.

#### 2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

- Adverse weather conditions;
- Fire;
- Insects;
- Plant disease;
- Wildlife;
- Earthquake;
- Volcanic eruption; or



h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting:

Unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

### 3. Annual Premium

a. The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insurance experience through the 1983 crop year under the terms of the experience table contained in the soybean policy in effect for the 1984 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction amount will not increase because of favorable experience;

(3) The premium reduction amount will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous from at least prior to the 1984 crop year.

### 4. Insurance Period

In accordance with the provisions of section 7 of the general crop insurance policy the calendar dates for the end of the insurance period are the date immediately following planting as follows:

(a) December 31 in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia.

(b) December 10 in all other states.

### 5. Unit Division

Except in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, and Texas, soybean acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as provided by the actuarial table and if for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and either:

a. The acreage planted to the insured soybean crop is located in separate, legally identifiable sections or, in the absence of section descriptions the land is identified by separate ASCS Farm Serial Numbers provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified, and the insured acreage can be determined; and

(2) The soybeans are planted in such a manner that the planting pattern does not continue into an adjacent section or ASCS Farm Serial Number; or

b. The acreage planted to the insured soybeans is located in a single section (or ASCS Farm Serial Number if applicable) and consists of acreage on which both irrigated

and nonirrigated practices are carried out, provided:

(1) Soybeans planted on the irrigated acreage do not continue into nonirrigated acreage in the same rows or planting pattern. (Non-irrigated corners of a center pivot irrigation system planted to insurable soybeans are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine the unit yield for the purpose of determining the guarantee for the unit.); and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good irrigated and nonirrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

### 6. Notice of Damage or Loss

For purposes of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

### 7. Claim for Indemnity

a. An indemnity will be determined for each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of soybeans to be counted (see subsection 7.b.);

(3) Multiplying the remainder by your price election; and

(4) Multiplying this result by your share.

b. The total production (bushels) to be counted for a unit will include:

(1) All harvested production and may be adjusted for moisture or quality as follows:

(a) Mature soybean production which is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 13.0 percent.

(b) Soybean production which, due to insurable causes, has a test weight of less than 49 pounds per bushel or is of distinctly low quality as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act will be adjusted by:

(i) Dividing the value per bushel of such soybeans by the price per bushel of U.S. No. 2 soybeans; and

(ii) Multiplying the result by the number of bushels of such soybeans.

(c) The applicable price for No. 2 soybeans will be the local market price on the earlier of the day the loss is adjusted or the day the insured soybeans are sold.

(2) All appraised production and will include:

(a) Unharvested production on harvested acreage and potential production lost due to an uninsured cause and failure to follow recognized good soybean farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use (other than harvest) without our prior written consent or damaged solely by an uninsured cause;

(c) Any appraised production on unharvested acreage;

(d) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use unless such acreage is:

(i) Not put to another use before harvest of soybeans becomes general in the county and reappraised by us;

(ii) Further damaged by an insured cause and reappraised by us; or

(iii) Harvested.

c. A replanting payment is available under this endorsement. The replanting payment will not exceed 3 bushels multiplied by the price election, multiplied by your share. When the crop is replanted by a practice that was uninsurable as an original planting, any indemnity will be reduced by the amount of the replanting payment.

### 8. The Cancellation and Termination Dates

State and county	Cancellation and termination dates
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas and all Texas counties lying south thereof.	February 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Maverick, Zavala, Frio, Atascosa, Karnes, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	March 31.
All other Texas counties and all other states.	April 15.

### 9. Contract Changes

Contract changes will be available at your service office by December 31 prior to the cancellation date for counties with an April 15 cancellation date and by November 30 prior to the cancellation date for all other counties.

### 10. Meaning of Terms

a. "Harvest" means the completion of combining or threshing of soybeans on the unit.

b. "Distinctly Low Quality" means:

(1) Exceeding 8.0 percent kernel damage (excluding heat damage);

(2) Having a musty, sour, or commercially objectionable foreign odor which causes the soybeans to grade U.S. Sample grade; or

(3) Graded as "Garlicky" soybeans.



c. "Replanting" means performing the cultural practice necessary to replant insured acreage to soybeans.

d. "Section" is a unit of measure under the rectangular survey system describing a tract of land generally one mile square, usually consisting of approximately 640 acres.

Done in Washington, DC, on November 13, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-27053 Filed 11-24-87; 8:45 am]

BILLING CODE 3410-08-M

## 7 CFR Part 401

[Amdt. No. 15; Doc. No. 4978S]

### General Crop Insurance Regulations; Sunflower Seed Crop Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section, 7 CFR 401.124, to be known as the Sunflower Crop Endorsement. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection on sunflowers in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

**EFFECTIVE DATE:** December 31, 1987.

#### FOR FURTHER INFORMATION CONTACT:

Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U. S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 28, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects

on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith adds to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.124, the Sunflower Crop Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring sunflowers.

The provisions for insuring sunflowers contained in 7 CFR 401.124 will supersede those provisions for insuring sunflowers contained in 7 CFR Part 428 the Sunflower Crop Insurance Regulations, effective with the beginning of the 1988 crop year. The present policy contained in 7 CFR Part 428 will be terminated at the end of the 1987 crop year and later removed and reserved. FCIC will amend the title of 7 CFR Part 428 by separate document so that the provisions therein are effective only through the 1987 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Sunflower Endorsement to 7 CFR Part 401 as outlined below, FCIC makes changes in section 5 as follows:

1. Add unit division guidelines and add a clause to specify that division of units may result in the insured paying additional premium for guideline unit division in accordance with actuarial studies which show an increased risk when units are divided.

Add language to specify that nonirrigated corners of a center pivot irrigation system are part of the irrigated

unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine your yield for the purpose of determining the guarantee for the unit.

On Tuesday, September 29, 1987, FCIC published a notice of proposed rulemaking in the *Federal Register* at 52 FR 36425, to amend 7 CFR Part 401 by adding a new § 401.124 Sunflower Endorsement. The public was given 30 days in which to submit written comments, data, and opinions on the rule but none were received. Therefore, FCIC adopts the rule published at 52 FR 36425, as a final rule.

#### List of Subjects in 7 CFR Part 401

General crop insurance regulations; Sunflower endorsement.

#### Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

#### PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.124 Sunflower Seed Crop Endorsement, effective for the 1988 and Succeeding Crop Years, to read as follows:

#### § 401.124 Sunflower seed crop endorsement.

The provisions of the Sunflower Seed Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

#### Federal Crop Insurance Corporation Sunflower Seed Crop Endorsement

##### 1. Insured Crop

a. The crop insured will be sunflower seed ("sunflowers").

b. Unless otherwise provided by the actuarial table, insurance will attach only on acreage initially planted in rows far enough apart to permit cultivation; but, if such insured acreage is destroyed and replanted by broadcasting, drilling, or in rows too close to permit cultivation, it will be considered insured acreage.

##### 2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:



- a. Adverse weather conditions;
- b. Fire;
- c. Insects;
- d. Plant disease;
- e. Wildlife;
- f. Earthquake;
- g. Volcanic eruption; or
- h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general policy.

### 3. Annual Premium

a. The annual premium is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the sunflower policy in effect for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

- (1) No premium reduction will be retained after the 1989 crop year;
- (2) The premium reduction will not increase because of favorable experience;
- (3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;
- (4) Once the loss ratio exceeds .80, no further premium reduction will apply; and
- (5) Participation must be continuous.

### 4. Insurance Period

The calendar date for the end of insurance period is November 30 of the calendar year in which the sunflowers are normally harvested.

### 5. Unit Division

Sunflower acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as provided for by the actuarial table and if for each proposed unit you maintain written verifiable records of planted acreage and harvested production for at least the previous crop year; and either

a. Acreage planted to insured sunflowers is located in separate legally identifiable sections or, in the absence of section descriptions the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the section or Farm Serial Number are clearly identified, and the insured acreage can be easily determined; and

(2) The safflowers are planted in such a manner that the planting pattern does not continue into the adjacent section or Farm Serial Number; or

b. The acreage planted to sunflowers is located in a single section or Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Sunflowers planted on irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern (Nonirrigated corners of a center pivot

irrigation system are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine your yield for the purpose of determining the guarantee for the unit; and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized irrigated and nonirrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

### 6. Notice of Damage or Loss

The representative samples of unharvested sunflowers as required in section 8 of the general crop insurance policy will be at least 10 feet wide and the entire length of the field.

### 7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of sunflowers to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production (in pounds) to be counted for a unit will include all harvested and appraised production.

(1) Mature sunflower production (quantity) which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 10 percent; or

(2) Mature sunflower production which, due to insurable causes, has a test weight below 25 pounds per bushel for oil type sunflowers or below 22 pounds per bushel for non-oil type sunflowers will be adjusted by:

(a) Dividing the value per pound by the price per pound of No. 2 sunflowers; and

(b) Multiplying the result by the number of pounds of insured sunflowers.

The applicable price for No. 2 sunflowers will be the local market price on the earlier of the day the loss is adjusted or the day the sunflowers are sold.

(3) Any harvested production from other crops growing in the sunflowers will be counted as sunflowers on a weight basis.

(4) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good sunflower farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any unharvested production or harvested or unharvested acreage.

(5) Any appraisal we have made on insured acreage and given written consent for that acreage to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of sunflowers becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

### 8. Replant Payment

In accordance with paragraph 9.h. of the general crop insurance policy a replant payment not to exceed the product by multiplying 175 pounds times the prime elective, times your share may be made.

### 9. Cancellation and Termination Date

The cancellation and termination date for all states is April 15.

### 10. Contract Changes

The date by which contract changes will be available in your service office will be December 31 preceding the cancellation date.

### 11. Meaning of Terms

a. "Harvest" means the completion of combining or threshing of sunflowers on the unit.

b. "Replanting" means performing the cultural practices necessary to replant insured acreage to sunflowers.

Done in Washington, DC, on November 5, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-27054 Filed 11-24-87; 8:45 am]

BILLING CODE 3410-08-M

## 7 CFR Part 401

[Amdt. No. 27; Doc. No. 5007S]

### General Crop Insurance Regulations; Malting Barley Option

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule with request for comment.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section 7 CFR 401.135, to be known as the Malting Barley Option. The intended effect of this rule is to provide the regulations and endorsement containing the provisions of crop insurance protection on malting barley as an option to the Barley Endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

**EFFECTIVE DATE:** December 31, 1987.

**ADDRESS:** Written comments on this interim rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.



**FOR FURTHER INFORMATION CONTACT:**

Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as November 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith adds to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.135, the Malting Barley Option, effective for the 1988 and succeeding crop years, to provide the provisions for insuring malting barley.

The provisions for insuring malting barley contained in 7 CFR 401.135 will supersede those provisions contained in Amendment No. 2 to 7 CFR Part 419, the Barley Crop Insurance Regulations (Malting Barley Option, March 24, 1987,

52 FR 9285), effective with the beginning of the 1988 crop year, as they relate to malting barley crop insurance coverage.

On Thursday, July 30, 1987, FCIC published a final rule in the *Federal Register* at 52 FR 28443, issuing 7 CFR Part 401, the General Crop Insurance Regulations. Ten endorsements were published, including 7 CFR 401.103, the Barley Endorsement.

7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops which substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC.

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the policy contained in a separate part of Chapter IV will be terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 419 will be effective only through the end of the 1987 crop year, FCIC published a final rule in the *Federal Register* on Monday, September 14, 1987, at 52 FR 34627, which maintained the effectiveness of the Barley Crop Insurance Regulations (7 CFR Part 419) only through the end of the 1987 crop year.

At the time the Barley Endorsement (7 CFR 401.103) was published as a final rule (July 30, 1987, 52 FR 28443), FCIC inadvertently neglected to issue the provisions of the Malting Barley Option as an option under 7 CFR Part 401. Termination of the Barley Crop Insurance Regulations (7 CFR Part 419) at the end of the 1987 crop year has the effect of terminating Amendment No. 2, the Malting Barley Option. Unless a malting barley option is provided for under 7 CFR Part 401 for the 1988 crop year, there will be no such option

available in accordance with the intent to terminate published at 52 FR 34627.

Therefore, in order to continue to provide a malting barley option to present and future insureds, good cause is shown for publishing the malting barley option herein as an interim rule to become effective on December 31, 1987, the date by which policy changes must be filed in the service office.

In publishing the Malting Barley Option, FCIC makes no substantive changes in the provisions as published on March 24, 1987, at 52 FR 9285. Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions.

FCIC is soliciting public comments, data, and opinions on this rule for 60 days after publication in the *Federal Register*, and will schedule a review of this rule as soon as possible after the 60-day period in order to publish any amendment made necessary by the comments received.

Written comment, data, and opinions on this rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

**List of Subjects in 7 CFR Part 401**

General Crop Insurance Regulations; Malting Barley Option.

**Interim Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

**PART 401—[AMENDED]**

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.135 Malting Barley Option, effective for the 1988 and Succeeding Crop Years, to read as follows:



**§ 401.135 Malting Barley Option.**

The provisions of the Malting Barley Option for the 1988 and subsequent crop years are as follows:

**Federal Crop Insurance Corporation****Malting Barley Option**

This is a continuous Amendment.

**Note.**—A false claim made to the Corporation, or a false statement made on a matter within the jurisdiction of the Corporation, may subject the maker to criminal and civil penalties (18 U.S.C. 1001, 1006; 31 U.S.C. 3729, 3730).

Insured's Name \_\_\_\_\_  
Address \_\_\_\_\_  
Contract No. \_\_\_\_\_  
Crop Year \_\_\_\_\_  
Identification No. \_\_\_\_\_  
SSN \_\_\_\_\_  
Tax \_\_\_\_\_

It is hereby agreed to amend the Federal Crop Insurance Barley Endorsement under, and in accordance with, the following terms and conditions:

1. The Option must be submitted to us on or before the final date for accepting applications for the initial crop year in which you wish to insure your malting barley acreage under this Option.
2. You must have a Federal Crop Insurance Barley Endorsement ("Endorsement") in force and have elected the highest price election.
3. You must provide acceptable records of your acreage and production for malting barley, by type or variety for the last three years in which malting barley was produced by you. These records will be used to establish your production guarantee.
4. All barley acreage in the county planted to a malting type or variety in which you have a share, will be insured as one unit under this Option unless we agree in writing to multiple units. All barley acreage of any non-malting type or variety, not under a malting barley contract, will be insured under the terms of the Endorsement.
5. You must have a contract with a processor in the business of buying malting barley. The contract must be executed and binding on both you and the processor before the acreage report is due and show the quantity of contracted malting barley. A copy of all contracts must be submitted with the acreage report.
6. Your unit production guarantee under this Option is the lesser of:
  - a. Your share of the bushel amount of your malting barley contract; or
  - b. Your share of the production guarantee at the 75% coverage level for all insurable malting barley acreage on the unit.
7. Your production unit guarantee multiplied by the difference between the malting barley contract price<sup>1</sup> and the price

<sup>1</sup> If a specific contract price cannot be determined from the contract by the acreage reporting date, the malting barley contract price will be the price specified in the actuarial table for that purpose.

election under the Endorsement will be your dollar amount of insurance for the unit.

8. Your premium will be your dollar amount of insurance for malting barley multiplied by the average basic barley rate for your insurable malting barley acreage multiplied by the applicable malting barley premium factor contained in the actuarial table.

9. All malting barley production from insurable malting barley acreage will be used to determine your indemnity without regard to the unit arrangement provided under the Endorsement.

10. The indemnity for each malting barley unit under this amendment will be determined by:

- a. Subtracting from your unit production guarantee under this Option, your share of the production of malting barley to count; and
- b. Multiplying that result by the difference between the contract price and the highest price election under the Endorsement.

11. a. The production of malting barley to count (in bushels) will include all:

- (1) Mature barley production accepted by the processor;
- (2) Mature barley which meets the standards contained in subparagraph 11.b. below;
- (3) Mature barley which fails to qualify under (1) or (2) because of uninsurable causes; and
- (4) Appraised production not included in 11.a. (1), (2), or (3) above.

b. The standards referred to in subparagraph 11.a. above are:

(1) Two-rowed Malting Barley production is considered acceptable if it has a test weight of at least 48 pounds per bushel; contains at least 93 percent sound barley, no more than 10 percent thin barley or 2 percent black barley; and is not smutty, garlicky, or ergoty.

(2) Six-rowed Malting Barley production is considered acceptable if it has a test weight of at least 43 pounds per bushel; contains at least 90 percent sound barley, no more than 15 percent thin barley or 2 percent black barley; and is not smutty, garlicky, or ergoty.

c. All grading factors in subparagraph 11.b. above must be determined by a grain grader licensed under the United States Grain Standards Act from samples obtained by a licensed sampler or our loss adjuster. Any production not accepted by a processor, which is not graded, will be considered malting barley to count.

d. Harvested production of malting barley to count will be reduced .12 percent for each .1 percentage point of moisture in excess of 13.0 percent for any mature malting barley production.

12. All provisions of the Endorsement not in conflict with this Option are applicable.

13. As used in this Option:

a. "Processor" means any business enterprise regularly engaged in the malting of barley or brewing malt beverages for human consumption.

b. "Two-rowed Malting Barley" means barley as defined in the Official United States Standards for Barley.

c. "Six-rowed Malting Barley" means barley as defined in the Official United States Standards for Barley.

d. "Insurable malting barley acreage" means all acreage insurable under the Basic

Barley Endorsement planted to any type or variety of malting barley.

Done in Washington, DC on November 13, 1987.

E. Ray Fosse,  
Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-27051 Filed 11-24-87; 8:45 am]

BILLING CODE 3410-08-M

**7 CFR Part 401**

[Amdt. No. 13; Doc. No. 4976S]

**General Crop Insurance Regulations; Safflower Crop Endorsement**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section, 7 CFR 401.123, to be known as the Safflower Crop Endorsement. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection on safflowers in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

**EFFECTIVE DATE:** December 31, 1987.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to



compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith adds to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.123, the Safflower Crop Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring safflowers.

The provisions for insuring safflowers contained in 7 CFR 401.123 supersede those provisions for insuring safflowers contained in 7 CFR Part 452 the Safflower Crop Insurance Regulations, effective with the beginning of the 1988 crop year. The present policy contained in 7 CFR Part 452 will be terminated at the end of the 1987 crop year and later removed and reserved. FCIC will amend the title of 7 CFR Part 452 by separate document so that the provisions therein are effective only through the 1987 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Safflower Endorsement to 7 CFR 401 as outlined below, FCIC changes section 5 of the endorsement as follows:

1. Add unit division guidelines and add a clause to specify that division of units may result in the insured paying additional premium for guideline unit division in accordance with actuarial studies which show an increased risk when units are divided. Add language to specify that nonirrigated corners of a center pivot irrigation system are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine

your yield for the purpose of determining the guarantee for the unit.

On Tuesday, September 29, 1987, FCIC published a notice of proposed rulemaking in the Federal Register at 52 FR 36424, to amend 7 CFR Part 401 to add a new section, 7 CFR 401.123, Safflower Endorsement. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, FCIC herewith adopts the rule published at 52 FR 36424 as a final rule.

#### List of Subjects in 7 CFR Part 401

General Crop Insurance Regulations, Safflower Crop Endorsement.

#### Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

#### PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.123 Safflower Seed Crop Endorsement, effective for the 1988 and Succeeding Crop Years, to read as follows:

#### § 401.123 Safflower Seed Crop Endorsement.

The provisions of the Safflower Seed Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

#### Federal Crop Insurance Corporation

##### Safflower Seed Crop Endorsement

#### 1. Insured Crop.

a. The crop insured will be safflower seed ("safflowers").

b. In addition to the safflowers not insurable in section 2 of the general crop insurance policy, we do not insure any safflowers on which safflowers, sunflowers, dry beans, soybeans, mustard, rapeseed, or lentils have been grown the preceding crop year.

#### 2. Causes of loss.

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

- Adverse weather conditions;
- Fire;
- Insect infestation;
- Plant disease;

e. Wildlife;

f. Earthquake;

g. Volcanic eruption; or

h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or subsection 9 of the general policy.

#### 3. Annual Premium

The annual premium is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

#### 4. Insurance Period

The calendar date for the end of insurance period is October 31 of the calendar year in which the safflowers are normally harvested.

#### 5. Unit Division

Safflower acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as provided for by the actuarial table and if for each proposed unit you maintain written verifiable records of planted acreage and harvested production for at least the previous crop year; and either

a. Acreage planted to insured safflowers is located in separate legally identifiable sections or, in the absence of section descriptions the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the section or Farm Serial Number are clearly identified, and the insured acreage can be easily determined; and

(2) The safflowers are planted in such a manner that the planting pattern does not continue into the adjacent section or Farm Serial Number; or

b. Acreage planted to safflowers is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Safflowers planted on irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern (Nonirrigated corners of a center pivot irrigation system are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine your yield for the purpose of determining the guarantee for the unit.); and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good irrigated and nonirrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined for the purpose of calculating an indemnity.

#### 6. Notice of Damage or Loss

The representative samples of unharvested safflowers as required in section 8 of the general crop insurance policy will be at least 10 feet wide and the entire length of the field.



**7. Claim for Indemnity**

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting from that result the total production of safflowers to be counted;

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production (in pounds) to be counted for a unit will include all harvested and appraised production.

(1) Mature safflower production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 8.0 percent.

(2) Mature safflower production will be adjusted for quality when, due to insurable causes, such production has a test weight below 35 pounds per bushel or has seed damage in excess of 25 percent as determined by a grader licensed to grade safflowers by the Federal Grain Inspection Service.

(3) Mature safflower production which is eligible for quality adjustment, due to insurable causes, will be adjusted by:

(a) Dividing the value per pound of damaged safflowers by the average market price per pound for undamaged safflowers; and

(b) Multiplying the result by the number of pounds of such safflowers.

For the purpose of this insurance, the applicable price for damaged safflowers will be not less than 50 percent of the average market price for undamaged safflowers.

(4) Any harvested production from other volunteer plants growing in the safflowers will be counted as safflowers on a weight basis.

(5) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any appraised production on unharvested acreage.

(6) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of safflowers becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

**8. Cancellation and Termination Date**

The cancellation and termination date for all states is April 15.

**9. Contract Changes**

The date by which contract changes will be available in your service office is December 31 preceding the cancellation date.

**10. Meaning of Terms**

a. "Harvest" means the completion of combining or threshing of safflowers on the unit.

b. "Value per pound of damaged safflowers" means the value of the damaged safflowers (test weight below 35 pounds per bushel or seed damage in excess of 25 percent) at the local market but not less than 50 percent of the average market price for undamaged safflowers.

Done in Washington, DC, on November 5, 1987.

**E. Ray Fosse,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 87-27052 Filed 11-24-87; 8:45 am]

**BILLING CODE 3410-08-M**

**FEDERAL RESERVE SYSTEM****12 CFR Part 225**

[Regulation Y; Docket No. R-0619]

**Data Processing Activities; Bank Holding Company Act**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** In light of the technological developments in the Com industry and the Board's expansion of the permissible data processing activities of Regulation Y in 1982, the Board is revoking its interpretation, 12 CFR 225.123(e)(4), concerning the permissibility of providing computer output to microfilm services ("Com") as a permissible incidental data processing activity.

**EFFECTIVE DATE:** November 25, 1987.

**FOR FURTHER INFORMATION CONTACT:** J. Virgil Mattingly, Deputy General Counsel (202/452-3430), Legal Division, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (202/452-3544).

**SUPPLEMENTARY INFORMATION:** In 1975, the Board issued an interpretation that a bank holding company may offer Com services as a permissible incidental data processing activity, only if the Com services were offered as an output option for data otherwise being permissibly processed by the bank holding company system and not as a separate line of endeavor, § 225.123(e)(4) of the Board's Regulation Y, 12 CFR 225.123(e)(4).

In 1982, the Board significantly expanded the scope of permissible data processing activities in which a bank holding company may engage to include the provision of data processing and data transmission services by any technological means provided that the data to be processed is limited to financial, banking or economic data,

§ 225.25(b) (8) of the Board's Regulation Y, 12 CFR 225.25(b) (8). The Board's action expanding the scope of permissible data processing activities was upheld in *Association of Data Processing Service Organizations, Inc. v. Board of Governors*, 745 F.2d 677 (D.C. Cir. 1984). However, in 1982, when the Board amended Regulation Y to expand the scope of permissible data processing activities, the Board did not revise its 1975 interpretation regarding the provision of Com services by a bank holding company.

Thus, the Board's 1975 Com services interpretation fails to take cognizance of the substantial technological changes in data processing that the Board relied upon in expanding its data processing regulation in 1982. Specifically, the Com services presently available are materially different from the type of Com services which were being performed when the Board adopted its 1975 interpretation. For example, technological improvements in the Com industry allow for the manipulation, sorting and arranging of data in a way that constitutes a substantive change to data, which is the touchstone of the Board's definition of data processing, and, as such would qualify as data processing under section 225.25(b) (8) of the Board's Regulation Y, 12 CFR 225.25(b) (8).

On October 14, 1987, the Board approved the application of MCorp, Dallas, Texas, and MCorp Financial, Inc., Wilmington, Delaware, to acquire Kalvar Corporation, Minneapolis, Minnesota, a company engaged in data processing activities, including offering enhanced Com services. *MCorp*, 73 Federal Reserve Bulletin—(Order dated October 14, 1987). The Board in that case noted its intention, in light of the technological developments in the Com industry and the Board's expansion of the permissible data processing activities of Regulation Y in 1982, to revoke its 1975 Com services interpretation. Accordingly, the Board hereby revokes its 1975 Com services interpretation. 12 CFR 225.123(e) (4).

**Public Comment**

The provisions of 5 U.S.C. 553 relating to notice, public participation, and deferred effective date, have not been followed in connection with the adoption of this amendment because the change does not constitute a substantive rule subject to the requirements of that section. The Board's expanded rulemaking procedures have not been followed for the same reason.



**Regulatory Flexibility Act Analysis**

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendment will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 12 CFR Part 225**

Banks, banking, Federal Reserve System, Holding Companies.

For the reasons set forth above, 12 CFR Part 225 is amended as follows:

**PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL**

1. The authority citation for 12 CFR Part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j) (13), 1818, 1843(c) (8), 1844(b), 3106, 3108, 3907 and 3909.

2. Section 225.123 is amended by removing paragraph (e)(4) which states:

"Supplying formatting for computer output microfilm and supplying computer output microfilm only as an output option for data otherwise being permissibly processed by the holding company system."

By order of the Board of Governors of the Federal Reserve System, November 19, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-27145 Filed 11-24-87; 8:45 am]

BILLING CODE 6210-01-M

**FARM CREDIT ADMINISTRATION****12 CFR Part 614****Loan Policies and Operation; Borrower Rights**

AGENCY: Farm Credit Administration.

ACTION: Final rule.

**SUMMARY:** The Farm Credit Administration Board (FCA Board) adopts amendments to the borrower rights regulations at 12 CFR 614.4440 through 614.4444. Specifically, 12 CFR 614.4440(c) is amended to include Federal land banks (FLBs) and Federal intermediate credit banks (FICBs) in the definition of "System institution." Amendments are also made to 12 CFR 614.4442, which permit the board to designate an alternate board member to perform credit review committee duties.

The Farm Credit Administration (FCA) published final regulations on this subject on October 28, 1986 (51 FR 39486), which became effective on November 28, 1986. Comments on certain aspects of the regulation were received until December 30, 1986. In

response to those comments, the FCA Board published amendments to the regulations on April 15, 1987 (52 FR 12143), which became effective on May 20, 1987 (52 FR 19129). The FCA Board determined that additional amendments to 12 CFR 614.4440 and 614.4442 should be proposed and on June 4, 1987 (52 FR 21073), published them for public comment. As discussed in more detail below, these amendments are adopted by FCA Board action.

**EFFECTIVE DATE:** The regulations shall become effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session. Notice of the effective date will be published.

**FOR FURTHER INFORMATION CONTACT:**

Joanne P. Ongman, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA. 22102-5090, (703) 883-4020, TDD (703) 883-4444.

**SUPPLEMENTARY INFORMATION:** On June 4, 1987, the FCA published for comment proposed amendments to the borrower rights regulations at 12 CFR 614.4440(c) and 614.4442. In order to provide borrowers with an opportunity to have adverse credit decisions reviewed by the actual decisionmaking institution, it was proposed to amend 12 CFR 614.4440(c) to include FLBs and FICBs in the definition of "System institution." In order to ensure that an elected board member actively participates on the credit review committee, it was proposed to amend 12 CFR 614.4442 to provide that a board may designate an alternate to perform a board member's credit review committee duties, but the alternate must also be a board member.

Comments were received from the Farm Credit System Capital Corporation (Capital Corporation), the Farm Credit Corporation of America (FCCA) on behalf of its members, and the Texas, St. Louis, Louisville, and Baltimore Farm Credit Districts. The FCA carefully analyzed and considered each comment relating to the subjects for which the FCA Board invited comments. The FCA Board has not considered those comments which addressed matters outside the two specified subject areas.

The comments generally supported the amendment to 12 CFR 614.4440(c) by which FLBs and FICBs are required to establish credit review committees. However, the Texas Farm Credit District commented that credit review committee operations conducted by a FLB or FICB will require travel and additional expenses at a time when Congress and the Farm Credit System are scrutinizing costs. Section 4.14 of the

Farm Credit Act of 1971, as amended (Act), 12 U.S.C. 2202, requires that "each Farm Credit System institution shall establish one or more credit review committee(s)." Accordingly, the costs associated with credit review committees must be viewed as a statutory cost of doing business since the regulations merely implement the borrower rights requirements mandated by Congress.

As discussed in more detail below, most of the other comments raise issues falling into three broad categories. The response to such comments is based on a thorough consideration of the merits of the positions expressed.

**I. Interaction Between Capital Corporation Credit Review Committee and Credit Review Committees of Other System Institutions**

The FCCA and the Capital Corporation requested the FCA to clarify by regulation that a borrower, whose loan has been transferred to the Capital Corporation and who was afforded credit review committee consideration of an adverse credit decision by the originating bank or association, is not entitled to a second committee review by the Capital Corporation. The FCCA also stated that it assumed that 12 CFR 614.4440-614.4444 would apply only to loans "owned or participated in" by the Capital Corporation.

One of the basic objectives of the amendment to 12 CFR 614.4440(c) is to provide borrowers with an opportunity to have adverse credit decisions reviewed by the actual decisionmaking institution. Therefore, if the Capital Corporation renders an adverse credit decision to an applicant as those terms are defined in 12 CFR 614.4440, 12 CFR 614.4443 provides for a review, if one is requested, by a credit review committee established by the Capital Corporation. For example, credit review committee action by the Capital Corporation may occur in connection with a forbearance decision authorized pursuant to section 4.28G(a)(20) of the Act, 12 U.S.C. 2216(f). See 52 FR 12145 (April 15, 1987). Credit review committees established by the Capital Corporation only review adverse credit decisions made by the Capital Corporation and do not exercise any type of review over final decisions of credit review committees established by other System institutions. Accordingly, no change to the regulation is needed.



## II. Credit Review Committee Duties of Board Members

### A. Designation of Alternate Who is a Member of the "Board of the Institution That Originated the Loan"

In their comments, the FCCA and the Texas and St. Louis Farm Credit Districts requested the FCA to revise the proposed language in 12 CFR 614.4442 to permit FLBs and FICBs to designate a board member of the appropriate association as an alternate. They argue that this designation should be allowed because 12 CFR 614.4442 permits the duties of the board member serving on the Capital Corporation's credit review committee to be performed by an alternate who is a member of the board of the institution that originated the loan. In its comments, the Capital Corporation expressed concern that the latter designation would allow a board member involved in a previous review to also be a member of the credit review committee at the Capital Corporation level.

The amendment to 12 CFR 614.4442 provides borrowers with the opportunity to have adverse credit decisions reviewed by the actual decisionmaking institution, and is designed to achieve credit review committee action in a timely manner and to protect borrower rights by ensuring that an elected board member actively participates on each credit review committee. The FCA Board recognized that the Capital Corporation's nation-wide authority creates the potential for a great number of reviews to be conducted and that the Capital Corporation currently has only five board members available to serve on credit review committees. Given these circumstances, the FCA Board determined that, if needed to provide timely credit review committee action, board members of the institution which first originated the loan should be allowed to serve as alternates for Capital Corporation board members serving on credit review committees. A minor editorial change has been made to clarify the intent of the regulation. For System institutions other than the Capital Corporation, the requirement in 12 CFR 614.4442, that credit review committee duties of the board member may only be performed by an alternate who must be another board member of the same institution, would not interfere with timely review of adverse credit decisions. Therefore, the FCA Board determined that the procedure authorized by the regulation is appropriate.

Regarding the Capital Corporation's concern that this procedure potentially allows the same board member to be

part of both reviews, it is important to emphasize that credit review committees established by the Capital Corporation operate independently from credit review committees established by other System institutions; provide an entirely separate review of a distinct adverse credit decision; and do not exercise any type of review over final decisions of credit review committees established by other System institutions. The FCA Board also notes that it is within the Capital Corporation's power to prevent the same board member from being part of both reviews if it so decides.

### B. Requirement That Alternate Be Another Board Member

The Capital Corporation argued that board members should be allowed to retain the authority to delegate their credit review committee duties to bank, association, or Capital Corporation personnel and employees. In its comments, the FCCA argued that the language "farmer board representation" used in section 4.14 of the Act should be interpreted to permit an individual serving on a service center or advisory board to serve on credit review committees.

For the reasons discussed at length in earlier amendments to the borrower rights regulation, FCA interprets the term "farmer board representation" in section 4.14 of the Act to require that the credit review committee include a member of the institution's board of directors. See 51 FR 39494 (October 28, 1986). To ensure continued board member participation in these committees, 12 CFR 614.4442 permits the board member's credit review committee duties to be performed by an alternate, who must also be a board member. Regarding FCCA's comment, 12 CFR 614.4442 does not preclude members of service center or advisory boards from serving on credit review committees. However, it does preclude members of service center or advisory boards from fulfilling the statutory requirement that each credit review committee include at least one member of the board of directors of the institution establishing it.

## III. Establishment of Guidelines for Credit Review Committees

Existing 12 CFR 614.4442(a) requires FLBs to establish guidelines under which the board of directors of each FLBA establishes one or more credit review committees. This requirement was proposed to be eliminated in the amendment to 12 CFR 614.4442. The Texas Farm Credit District commented that the FCA should consider provisions

allowing FLBs and FICBs to establish guidelines for credit review committees. The FCA Board has determined that such guidelines are consistent with the responsibility of each bank board to adopt policies and guidelines relating to the exercise of loanmaking authority. Accordingly, paragraph (b) has been added to 12 CFR 614.4442 directing each bank board to adopt guidelines for credit review committees established by bank personnel and by associations subject to the bank's oversight.

### List of Subjects in 12 CFR Part 614

Agriculture, Banks, Banking, Credit.

As stated in the preamble, Part 614 of Chapter VI, Title 12 of the Code of Federal Regulations is amended as follows:

## PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for Part 614 continues to read as follows:

Authority: 12 U.S.C. 2183, 2199, 2202, 2243, 2244, 2252(a)(10).

Section 614.4341 also issued under 12 U.S.C. 2012(22), 2053, 2072(18), 2093(15), 2122(18), 2216G, 2252(a)(10).

### Subpart L—Notice of Action and Review

2. Section 614.4440 is amended by revising paragraph (c) to read as follows:

#### § 614.4440 Definitions

- (c) "System institution" means
- (1) Banks for cooperatives;
  - (2) Federal land banks;
  - (3) Federal intermediate credit banks;
  - (4) Federal land bank associations;
  - (5) Production credit associations; and
  - (6) The Farm Credit System Capital Corporation.

3. Section 614.4442 is revised to read as follows:

#### § 614.4442 Credit review committees.

(a) The board of directors of each System institution shall establish one or more credit review committees to review adverse credit decision made by the institution. The membership of each committee shall include at least one member of the institution's board, and a majority of each committee shall be composed of persons who were not involved in making the adverse credit decision under review. The duties of the members of the review committees may not be delegated to any other person, except that the credit review committee duties of the board member may be performed from time to time by an



alternate designated by the board who shall also be a board member. Provided further that, in the case of the Farm Credit System Capital Corporation board member, by unanimous vote, the Farm Credit System Capital Corporation board may designate an alternate who is a member of the board of the institution that first originated the loan under review by the committee, and who is willing to serve.

(b) Each Federal land bank and each Federal intermediate credit bank shall adopt guidelines for the establishment and operation of both its own credit review committee(s) and the credit review committee(s) of their respective associations.

November 19, 1987.

David A. Hill,

Secretary Farm Credit Administration Board.

[FR Doc. 87-27203 Filed 11-24-87; 8:45 am]

BILLING CODE 6705-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 87-NM-47-AD; Amdt. 39-5781]

#### Airworthiness Directives; Garrett Turbine Engine Company Model GTCP 85 Series Auxiliary Power Units

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Garrett Model GTCP 85 series Auxiliary Power Units (APU), that utilize one-piece cast turbine engine wheels, which requires installation of an augmentation containment ring. This amendment is prompted by reports that turbine wheels have separated, resulting in containment shroud fracture and subsequent penetration of the compartment. This condition, if not corrected, could lead to additional uncontained turbine wheel separations and compartment fires.

**EFFECTIVE DATE:** January 13, 1988.

**ADDRESSES:** The applicable service information may be obtained from Garrett Aviation Services Company, Data Distribution, Department H64-5, P.O. Box 29003, Phoenix, Arizona 85038. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roy McKinnon, Aerospace Engineer,

Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6327.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires installation of an augmentation containment ring in certain Garrett Model GTCP 85 series APU's, was published in the *Federal Register* on July 6, 1987 (52 FR 25238).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. Comments were received from nine domestic operators, four foreign operators, the Air Transport Association and the United Kingdom (UK) Civil Airworthiness Authorities (CAA).

Eight domestic operators and three foreign operators requested an extension of the compliance time for APU's that are ground-operable only. They suggested such compliance time limits as "at next shop visit," "24 months after the effective date," and "36 months after the effective date." Their basic reasons for requesting the extension are to prevent unscheduled removals and to avoid a potential parts shortage because of the large number of APU's affected (3,500). The FAA concurs that an extension of compliance time from 18 months to 36 months for APU's that are ground-operable only is appropriate, and would not have an adverse effect on safety. The final rule has been changed accordingly. However, the FAA has determined that the compliance time of 18 months for in-flight operable APU's, as proposed, is appropriate.

One operator and the UK-CAA suggested that the installation of the new Hastelloy S turbine shroud, in accordance with Garrett Service Bulletin 85-49-5700, dated July 20, 1987, should be considered an acceptable alternate means of compliance. The FAA concurs and has added that information to the final rule.

One operator suggested that the proposed AD duplicated AD 79-18-12. The FAA does not concur and has determined that no duplication exists since the requirements of AD 79-18-12 refer to replacement of the exhaust pipe, not the shroud.

Since issuance of the proposal, the manufacturer has issued revisions to Garrett Service Bulletin GTCP 85-49-5689, dated June 3, 1987 and July 24, 1987. The revisions add a fourth one

piece cast turbine wheel. Part No. 3842072-1, to the list of affected parts. This part is scheduled to enter production later this year; none are in service now. Therefore, although the final rule has been revised to reflect the latest revision to the service bulletin and to add the fourth part number to the list of applicable parts, the FAA has determined that this will not increase the number of units affected in the field, nor will it impose an additional economic burden on any operator.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule with the changes previously noted.

It is estimated that 3,500 APU's installed in airplanes of U.S. registry will be affected by this AD; that it will take approximately one manhour per unit during a normal shop visit, when repair necessitates access to the affected area; and that the average labor cost will be \$40 per manhour. The cost of parts is \$245 per ring. Based on these figures, the total estimated cost to U.S. operators will be \$997,500.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, airplanes equipped with Garrett Model GTCP 85 Series APU's are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

#### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

#### PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(q) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

#### § 39.13 [Amended]

2. By adding the following new airworthiness directive:



**Garrett Turbine Engine Company:** Applies to Garrett Model GTCP 85 series Auxiliary Power Units equipped with one-piece cast turbine wheels, Part Nos. 968095-X, 3604604-X, 3606982-1, and 3842072-1. Compliance required as indicated, unless previously accomplished.

To prevent turbine wheel separation and resulting containment shroud fragmentation, accomplish the following:

A. Install the augmentation containment ring, part number 3612249-1, in Garrett Model GTCP 85 series auxiliary power units in accordance with the accomplishment instructions of Garrett Service Bulletin GTCP 85-49-5689, dated July 24, 1987, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, as follows:

1. On in-flight operable units, within 18 months after the effective date of this AD.
2. On ground-operable-only units, within 36 months after the effective date of this AD.

B. Installation of the Hastelloy S turbine shroud, in accordance with Garrett Service Bulletin 85-49-5700, dated July 20, 1987, or later FAA approved revisions, is considered an acceptable alternate means of compliance with this AD.

C. An alternate means of compliance with this AD which provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a base to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Garrett Aviation Services Company, Data Distribution, Department H64-5, P.O. Box 29003, Phoenix, Arizona 85038. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective January 13, 1988.

Issued in Seattle, Washington, on November 16, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-27069 Filed 11-24-87; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 39

[Docket No. 87-NM-53-AD; Amdt. 39-5784]

### Airworthiness Directives; Short Brothers PLC Model SD3-30 and SD3-60 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers PLC Model SD3-30 and SD3-60 series airplanes, which requires further insulation of certain electrical contactor bodies. This amendment is prompted by reports of in-service failure of the insulation of the bodies of the contactors, which, if not corrected, could lead to grounding of the contactors and possible electrical fires.

**EFFECTIVE DATE:** January 14, 1988.

**ADDRESSES:** The applicable service information may be obtained from Short Brothers, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy M. Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Short Brothers PLC Model SD3-30 and SD3-60 series airplanes, which requires insulating certain electrical contactor bodies by installing shrink-on sleeving, was published in the *Federal Register* on August 5, 1987 (52 FR 29032).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 124 airplanes of U.S. registry will be affected by this AD, that it will take approximately 14 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be \$69,440.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number

of small entities because of the minimal cost of compliance per airplane (\$560). A final evaluation has been prepared for this regulation and has been placed in the docket.

## List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

## PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

## § 39.13 [Amended]

2. By adding the following new airworthiness directive:

**Short Brothers PLC:** Applies to Short Brothers PLC Model SD3-30 series airplanes, serial numbers SH3002 through SH3107, SH3109 through SH3121, and SH3123 through SH3125 inclusive; and Model SD3-60 series airplanes, serial numbers SH3601 through SH3695 inclusive; certificated in any category. Compliance required within the next 180 days after the effective date of this AD, unless previously accomplished.

To prevent fire caused by grounding of certain electrical contactors, accomplish the following:

A. For Model SD3-30 series airplanes, modify the ECE electrical contactors on panels 1C and 2C in accordance with the Accomplishment Instructions of Shorts Service Bulletin SD330-24-21, Revision 1, dated October 1986.

B. For Model SD3-60 series airplanes, modify the ECE electrical contactors on panels 1C and 2C in accordance with the Accomplishment Instructions of Shorts Service Bulletin SD360-24-06, dated August 1986.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Short Brothers, 2011 Crystal Drive, Suite 713, Arlington, Virginia



22202-3702. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 14, 1988.

Issued in Seattle, Washington, on November 17, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-27068 Filed 11-24-87; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 87-NM-89-AD; Amdt. 39-5783]

#### Airworthiness Directives; Short Brothers PLC Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.  
ACTION: Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers Model SD3-60 series airplanes, which requires removal or modification of the left-hand garment bag stowage unit introduced by Modification 7063. The stowage unit extends into the aisle and, if not corrected, could be an impediment to evacuation during an emergency.

**EFFECTIVE DATE:** January 14, 1988.

**ADDRESSES:** The applicable service information may be obtained from Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires the removal or modification of a left-hand garment bag stowage unit (Modification 7063) which reduces the aisle width from 20 inches to 19 inches between the rear row of seats and the aft exits on certain Short Brothers PLC Model SD3-60 series airplanes, was

published in the *Federal Register* on July 29, 1987 (52 FR 28276).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 34 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be \$2,720.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane (\$80). A final evaluation has been prepared for this regulation and has been placed in the docket.

#### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

#### PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983]; and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

**Short Brothers PLC:** Applies to Model SD3-60 airplanes equipped with a left-hand garment bag stowage unit (Modification 7063), certificated in any category. Compliance required within 90 days after the effective date of this AD, unless previously accomplished.

To remove a restriction to aisle width, due to the left-hand garment bag stowage unit, accomplish the following:

A. Remove the left-hand garment bag stowage unit, in accordance with Short Brothers, Service Bulletin SD360-25-34, dated December 1986, or modify the left-hand garment bag stowage unit, in accordance

with Short Brothers Service Bulletin SD360-25-35, dated March 1987.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 14, 1988.

Issued in Seattle, Washington, on November 17, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-27070 Filed 11-24-87; 8:45 am]

BILLING CODE 4910-13-M

#### FEDERAL TRADE COMMISSION

#### 16 CFR Part 13

[Docket No. C-2947]

#### Advertising Checking Bureau, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

**SUMMARY:** The Federal Trade Commission has set aside a 1979 consent order with The Advertising Checking Bureau, Inc. (93 F.T.C. 4), thus removing restrictions on respondent's involvement in cooperative advertising programs.

**DATES:** Consent Order issued January 4, 1979. Set Aside Order issued May 19, 1987.

**FOR FURTHER INFORMATION CONTACT:** FTC/S-2115, Joseph Eckhaus, Washington, D.C. 20580, (202) 326-2687.

**SUPPLEMENTARY INFORMATION:** In the matter of The Advertising Checking Bureau, Inc., a corporation. The prohibited trade practices and/or



corrective actions, as set forth at 44 FR 4664, are deleted.

#### List of Subjects in 16 CFR Part 13

Cooperative advertising programs,  
Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

#### Order Reopening and Setting Aside Order Issued on January 4, 1979

Before Commissioners: Daniel Oliver, Chairman, Patricia P. Bailey, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

On January 16, 1987, The Advertising Checking Bureau, Inc. ("ACB") filed its Petition to Reopen Proceeding And To Set Aside Consent Order ("Petition"), pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and § 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, requesting that the Commission set aside the order in Docket No. C-2947, issued on January 4, 1979.<sup>1</sup> ACB's petition was placed on the public record for thirty days, pursuant to § 2.51 of the Commission's Rules. One comment was received.

The complaint in this case alleged that ACB violated section 5 of the Federal Trade Commission Act by auditing price restrictive cooperative advertising programs. ACB's conduct, as alleged in the complaint, had the effect of fixing or "illegally influencing" the resale prices of dealers selling ACB's clients' merchandise and eliminating intrabrand competition. It is clear that the complaint challenging ACB's conduct applied a *per se* rule of illegality. The order prohibits ACB from "designing, implementing, conducting, administering or auditing" any cooperative advertising program that conditions the right of any dealer to obtain cooperative advertising allowances or credits because the dealer, among other things, sells or advertises merchandise at a discount or sale price.<sup>2</sup>

In its petition, ACB asserts that the order's prohibitions hinder ACB's efforts to compete with cooperative advertising

auditing firms not subject to the order's constraints. ACB states that setting aside the order would enable ACB to become a more effective competitor. ACB also argues that the restraints prohibited by the order are generally procompetitive or competitively neutral. ACB also states that the restraints covered by the order do not prohibit retailers from selling at discount prices or advertising discounts or sale prices with their own funds. ACB would like the Commission to set aside the order because "there is no rational economic basis for the order and no sound legal justification exists for its continuation."

Based on the information provided by ACB, and other available information, the Commission has concluded that ACB has made a satisfactory showing that the public interest requires reopening the proceeding in Docket No. C-2947 and setting aside the order. The Supreme Court's decisions in *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36 (1977), and *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752 (1984) make it clear that the rule of reason should be applied in determining whether nonprice vertical restraints unreasonably restrain competition and violate the antitrust laws. In a vertical setting, the *per se* rule applies only to agreements to fix resale prices that prevent the dealer from making independent pricing decisions. See *Monsanto*, 465 U.S. at 764. The fact that a distributional restraint may have an incidental effect on resale prices is not by itself enough to condemn the practice as *per se* unlawful.

The cooperative advertising practices prohibited by the order in this case would not by themselves constitute agreements to fix resale prices. Although such restrictions may in some cases reduce a dealer's incentive to cut prices, the restraints do not prevent the dealer from selling at discount prices or even from advertising discount prices at the dealer's own expense. Moreover, price restrictive cooperative advertising programs are likely to be procompetitive or at least competitively neutral in most cases by, for example, lowering the manufacturer's costs of monitoring retailer compliance with other, seemingly unrelated, cooperative advertising restrictions or channeling the retailer's advertising efforts in directions that the manufacturer believes consumers will find more compelling and beneficial. ACB's Petition at 5-9. This, in turn, may

stimulate dealer promotion and investment and, thus, benefit interbrand competition.

Based on the record, the Commission believes that there is no evidence that price restrictive cooperative advertising programs, standing alone, are sufficiently likely to be harmful that a flat ban, rather than a case-by-case inquiry, is appropriate. The practices prohibited by the order do not appear to be ones that would always or almost always tend to restrict competition and decrease output and, thus, do not warrant summary condemnation. *Broadcast Music, Inc. v. CBS*, 441 U.S. 1 (1979). In sum, the impediments to effective competition resulting from the order outweigh any reasons to retain the order.

In light of the foregoing, continuation of the order against ACB is no longer justified and would not be in the public interest because its application harms ACB's ability to administer cooperative advertising programs that are likely to be lawful even though they contain restrictions on the prices advertised. Absent evidence that ACB is knowingly helping to enforce resale price maintenance agreements, any prosecution of cooperative advertising restrictions under the rule of reason would more properly be directed against ACB's clients rather than against ACB.

Accordingly, it is ordered that the order of January 4, 1979, in Docket No. C-2947 be, and it hereby is, set aside.

By direction of the Commission,  
Commissioner Bailey dissenting.  
Commissioner Strenio did not participate.

Emily H. Rock,

Secretary.

[FR Doc. 87-27128 Filed 11-24-87; 8:45 am]

BILLING CODE 6750-01-M

#### 16 CFR Part 13

[Docket C-3219]

#### Tarrant County Medical Society; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair

<sup>1</sup> ACB also requests the Commission to withdraw the Commission's "Policy Statement Regarding Price Restrictions In Advertising Programs" ("Policy Statement"). 4 Trade Reg. Rep. (CCH) ¶ 39,057 (October 26, 1981), issued on June 27, 1980. In conjunction with the issuance of this order, the Commission is also withdrawing its policy statement.

<sup>2</sup> The order does not bar ACB from auditing cooperative advertising programs that restrict any dealer's right to obtain cooperative advertising allowances for the advertising of "closeouts," "irregulars" or "seconds."



methods of competition, this consent order requires, among other things, the Tarrant County Medical Society, of Fort Worth, Texas, to agree not to restrict, regulate or declare unethical any doctor's truthful advertising. Respondent also is required to provide, for 10 years, written notice to any doctor whose advertising it intends to challenge and allow that doctor a reasonable opportunity to respond.

**DATE:** Complaint and Order issued November 2, 1987.<sup>1</sup>

**FOR FURTHER INFORMATION CONTACT:** FTC/S-2115, Roy Conn, Washington, DC 20580. (202) 326-2687.

**SUPPLEMENTARY INFORMATION:** On Monday, August 10, 1987, there was published in the *Federal Register*, 52 FR 29535, a proposed consent agreement with analysis in the Matter of Tarrant County Medical Society, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing And Intimidating: Section 13.367 Members. Subpart—Combining Or Conspiring: S.13.384 Combining or conspiring; S.13.470 To restrain and monopolize trade. Subpart—Corrective Actions And/Or Requirements: S.13.533 Corrective actions and/or requirements; S.13.533-45 Maintain records; S.13.533-45(k) Records, in general; S.13.533-60 Release of general, specific, or contractual constrictions, requirements, or restraints.

#### List of Subjects in 16 CFR Part 13

Doctors, Physicians, Trade practices. (Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 87-27127 Filed 11-24-87; 8:45 am]

**BILLING CODE 6750-01-M**

<sup>1</sup> Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, 4-130, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 116

[Docket No. RM83-39-000; Order No. 484]

#### List of Property for Use in Accounting for Addition and Retirement of Reactor Plant Equipment

Issued November 18, 1987.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission is establishing a list of property to be used by utilities that own nuclear facilities for classifying units of reactor plant equipment as "retirement units" for accounting purposes. The Commission is amending its regulations because the existing classification guidelines in Account No. 322 are not adequate for Commission accounting purposes. Adopting this new list will allow the Commission to keep a more accurate accounting of each utility's property and will ensure that a utility classifies a particular item of property consistently throughout its filings with the Commission. Since this rule codifies the list of equipment classified as retirement units, utilities are no longer required to develop and submit their own list of retirement units to the Commission.

**EFFECTIVE DATE:** December 28, 1987.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Lane, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

#### SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt, and C.M. Naeve.

#### ORDER NO. 484

##### I. Introduction

The Federal Energy Regulatory Commission (Commission) is establishing a list for utilities to use in classifying certain property at nuclear power plants as "retirement units" for accounting purposes.<sup>1</sup> The list replaces

<sup>1</sup> The Commission may require a list of units of property under its accounting authority in section 301 of the Federal Power Act, 16 U.S.C. 825 (1982). Since 1937, the Commission, or its predecessor, the Federal Power Commission, has required a list of units of property under the Uniform System of Accounts. See Order No. 45, 2 FR 171 (Jan. 26, 1937). Since 1961, a list of retirement units for reactor plant equipment has been required. See Order No. 235, 26 FR 9887 (Oct. 21, 1961). The list of retirement units in this final rule is codified in 18 CFR Part 116.

current Commission regulations that allowed utilities to submit their own list of retirement units to the Commission.<sup>2</sup> While the list establishes a minimum requirements for this classification, a utility may adopt a more detailed list of retirement units, if it chooses, but it must classify these units in the same way throughout its records and filings with the Commission.<sup>3</sup>

## II. Background

The Commission defines "retirement units" as "those items of electric plant which, when retired, with or without replacement, are accounted for by crediting the book cost thereof to the electric plant account in which included."<sup>4</sup> In contrast, "minor items of property" are "the associated parts or items of which retirement units are composed."<sup>5</sup> The distinction between retirement units and the minor items of property which comprise these units is necessary to determine how the costs of these properties are recorded on the books and records of the company. This distinction is also useful to determine the appropriate cost-of-service treatment for particular property or expenses.

On September 25, 1985, the Commission issued a notice of proposed rulemaking (NOPR)<sup>6</sup> that proposed a standardized list of property to be classified as retirement units. One trade association and ten utilities filed comments in response to the NOPR.<sup>7</sup>

<sup>2</sup> "Units of Property for Use in Accounting for Additions and Retirements of Electric Plant" in Account No. 322 "Reactor Plant Equipment". Account No. 322 provides that a "utility shall adopt such list of retirement units deemed appropriate for reactor plant equipment in harmony with prescribed retirement units for other accounts, and file a copy of such a retirement units list with the Commission."

<sup>3</sup> A utility is already allowed to add items to the list of retirement units in other accounts in Part 116 if the item is both relatively costly and is not an integral part of a larger retirement unit.

<sup>4</sup> 18 CFR Part 101, Definition 32 (1987).

<sup>5</sup> 18 CFR Part 101, Definition 18 (1987).

<sup>6</sup> 50 FR 39134 (Sept. 27, 1985), IV FERC Stats. and Regs. ¶ 32,418. The NOPR also proposed two nonsubstantive amendments to Instruction 6 in Part 116: (1) Redesignating items (a) through (q) as items (1) through (17) in order to be consistent with the corresponding list of general retirement units for gas plants in 18 CFR Part 216, Instruction 6; and (2) revising the newly redesignated item (11) by deleting the term "(non-nuclear)" from the description of the plant piping because this provision applies to both nuclear and nonnuclear equipment. No comments were received regarding these proposed changes and they are adopted in this final rule.

<sup>7</sup> Edison Electric Institute, Commonwealth Edison Company, Consumers Power Company, Iowa Electric Light and Power Company, Iowa-Illinois Gas and Electric Company, Northeast Utilities Company, Ohio Edison Company, Public Service

Continued



While most favor the proposal, some argue that reclassification of existing equipment would be burdensome. Some commenters suggest revisions to the list.

### III. Discussion

The final rule adopts the list as proposed in the NOPR with certain minor modifications discussed below. The Commission is amending its regulations because the existing classification guidelines in Account No. 322 are not adequate for Commission accounting purposes. Adopting this new list will allow the Commission to keep a more accurate accounting of each utility's property and will ensure that a utility classifies a particular item of property consistently throughout its filings with the Commission. Since this rule codifies the list of equipment classified as retirement units, utilities are no longer required to develop and submit their own list of retirement units to the Commission.

#### A. Reclassification Burden

Consumers Power Company (Consumers Power), Iowa Electric Light and Power (Iowa Electric), and Vermont Yankee Nuclear Power Corporation (Vermont Yankee) argue that converting records of their existing nuclear power plants to conform to the retirement unit list proposed in the NOPR would be burdensome. Consumers Power states that it would take 24 man-months to convert these records while Vermont Yankee states that it would require five workweeks to accomplish this task. Consumers Power further argues that if the final rule includes existing plant equipment, the Commission should allow for a transition period of two or three years. Iowa Electric requests that if the final rule includes existing equipment, it should include regulations explaining how costs should be allocated in converting from a utility's current retirement list to the list established in the final rule.

The Commission does not believe that reclassifying this equipment is unduly burdensome. Most utilities already provide information that generally satisfies the requirements of this final rule. Furthermore, the Commission believes that any possible burden is outweighed by the need for accounting uniformity and consistent classification of equipment. Moreover, rather than establishing regulations explaining how an allocation of costs is to be made in the conversion process or establishing a general transition period, the

Commission will consider waiving the requirements of this rule or providing for a transition period for a utility that demonstrates application of the rule would cause undue hardship. The Commission will make these determinations on a case-by-case basis.

#### B. General Comments

Commonwealth Edison and Iowa-Illinois Gas and Electric Company state that the retirement unit list in the NOPR is not consistent with current practices for other plant accounts, since it would require reporting the equipment as "system" rather than reporting the individual equipment items that comprise these systems.

The Commission believes the commenters have misinterpreted the proposal. While the retirement unit list proposed included larger "system" retirement units, the Commission did not intend to preclude a utility from listing individual equipment units included in these "system" units.

The Southern California Edison Company recommends that the proposed list of retirement units follow the existing Nuclear Regulatory Commission's (NRC) Regulatory Guide 1.70 (NUREG-75/094) entitled "Standard Format and Content of Safety Analysis Reports for Nuclear Power Plants." This list is a specific categorization of nuclear systems used by electric utilities to prepare safety analysis reports for submission to the NRC.

The Commission is not adopting this suggestion as the items in the NRC guide are primarily related to safety analysis and design and are therefore not as appropriate for Commission accounting purposes as the list proposed in the NOPR.

Northeast Utilities Company suggests that, since the proposed lists for Boiling Water Reactor and Pressurized Water Reactor are similar, the final rule should combine the two lists into one. The Commission is not adopting this suggestion. The Commission believes that separate lists are necessary to avoid confusion and more accurately reflect accounting of these items of property.

Commonwealth Edison also states that there is a problem in using certain of the proposed retirement units for the Boiling and Pressurized Water Reactors since they include items which are components of many other systems, and therefore it would be difficult to determine the total cost of the proposed units of property.<sup>8</sup> The Commission does

not believe this is a problem. If an item is part of a retirement unit, by definition under Part 116, it cannot be a part of another retirement unit.

Ohio Edison Company (Ohio Edison) states that the Commission should expand certain definitions within the list of general retirement units (Instruction 6 to Part 116) to accommodate safety-related equipment unique to nuclear generation units.<sup>9</sup> The Commission disagrees. The provisions of Instruction 6, as well as the other provisions under Part 116, allow units to be subdivided so that the list can encompass safety-related piping of smaller size, as well as operational piping.

Ohio Edison also recommends that Electric Plant Instruction No. 10, Additions and Retirements of Electric Plant, be revised to include guidelines for capitalizing spare parts. It further suggests that these guidelines include the appropriate accounting treatment for safety and nonsafety related spare parts. The Commission declines to adopt this suggestion. Spare parts are not normally capitalized unless they are plant-specific and located at the plant.

Public Service of New Hampshire requests that the final rule delete the words "and controls" which appeared in the NOPR with several systems. It argues that much of the wiring and tubing required for remote controls is installed in bulk and therefore cannot be separated system by system. The Commission is not adopting this suggestion, since the current provisions of Part 116 already require that retirement units include all costs of associated items, including control devices.

#### C. Revisions to the Proposed List

At the suggestion of several commenters, the final rule makes several changes to the list proposed in the NOPR. Specifically, the final rule:

- (1) Revises the item "Reactor vessel internals including core" to "Reactor vessel internals";<sup>10</sup>
- (2) Revises the item "new fuel storage facilities" and "spent fuel storage facilities" to "new fuel storage

instrument systems, process and effluent radiological monitoring systems, area monitoring systems, and airborne radioactivity monitoring systems.

<sup>9</sup> Specifically, Ohio Edison suggests that in a nuclear plant, safety-related plant piping or piping header two inches or over in size be considered a retirement unit.

<sup>10</sup> Commonwealth Edison and Northwest Utilities suggest that the phrase "including core" connotes that nuclear fuel should be included in this account. This was not the Commission's intent.

Electric and Gas Company, Public Service of New Hampshire, Southern California Edison Company, and Vermont Yankee Nuclear Power Corporation.

<sup>8</sup> The items raised are: reactor trip systems, engineered safety feature instrument systems, safety related display instrumentation, other



equipment and/or racks" and "spent fuel storage equipment and/or racks";<sup>11</sup>

(3) Revises the item "Reactor coolant pressure boundary leakage detection system" to "Reactor coolant pressure boundary leakage system (when not part of another retirement unit)";<sup>12</sup>

(4) Deletes the item "Steam generation blowdown systems and controls"; and

(5) Clarifies that the item "Other coolant subsystems and controls" is intended to account for coolant systems not included as specific items elsewhere in the list.<sup>13</sup>

A number of commenters suggest that it would be more appropriate to include certain items in the proposed list in accounts other than Account No. 322.<sup>14</sup> The Commission declines to adopt these suggestions as the items are principally for the use of the reactor plant and, therefore, should be included in Account No. 322.

#### IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA),<sup>15</sup> requires agencies to prepare certain statements, descriptions, and analyses of rules that will have a "significant economic impact on a substantial number of small entities." The Commission is not required to make such an analysis if a rule would not have this impact.

<sup>11</sup> Public Service of New Hampshire states that these items should be "new fuel storage equipment" and "spent fuel storage equipment" to avoid confusion with facilities dedicated to fuel handling that meet the definition of Account No. 321.

<sup>12</sup> Structures and Improvements. Commonwealth Edison Company states that these items are actually fuel storage racks. The final rule incorporates the suggestions of both commenters to avoid confusion.

<sup>13</sup> Commonwealth Edison suggests that this item be deleted since it is comprised of instruments that are subcomponents of other systems. Rather than deleting the item, the final rule clarifies that it is to be included as a retirement unit only when it is not part of another retirement unit.

<sup>14</sup> Commonwealth Edison states that by using the term "subsystem", any portion of a reactor coolant or connected system would be a retirement unit, and the number of items could be very large.

<sup>15</sup> See Northeast Utilities Company, Commonwealth Edison, Public Service of New Hampshire, Public Service Electric and Gas Company. These suggested changes include: "Reactor containment," "Service water system," "Vent and drain systems," "Control room habitability systems and controls," "Ventilating equipment," "Auxiliary boiler system," "Containment air purification and cleanup systems and controls," "Containment combustible gas control systems and controls," "Other containment systems and controls," "Water supply and purification or cleanup system," "Control air systems," and "Area and airborne radioactivity monitoring systems." Commenters suggest that these items would be more appropriately classified under Account No. 321, Structures and Improvements; Account No. 323, Turbogenerator Units; or Account No. 325, Miscellaneous Power Equipment.

<sup>16</sup> 5 U.S.C. 601-612 (1982).

The Commission does not believe that this rule will have a significant economic impact on small entities. The rule establishes a standard list of retirement units of nuclear reactor equipment owned by utilities. The level of investment necessary for nuclear generating facilities generally limits their ownership to entities other than small entities.<sup>16</sup> Additionally, utilities that own nuclear facilities are classified as "major utilities" under the Commission's Uniform System of Accounts.<sup>17</sup> Although small or municipal utilities may purchase shares in these facilities, these utilities are not subject to the Uniform System of Accounts and the provisions of this rule. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### V. Paperwork Reduction Act

The information collection provisions in this final rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act<sup>18</sup> and OMB's regulations.<sup>19</sup> Interested persons can obtain information on the proposed information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426 (Attention: Ellen Brown, Division of Organization and Management Analysis, (202) 357-5311). Comments on the information collection provisions in this rule may be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

#### VI. Effective Date

This final rule is effective December 28, 1987. If OMB has not approved this final rule by that date, its effective date

<sup>16</sup> Section 601(6) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined, by reference to section 3 of the Small Business Act, as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a) (1982).

<sup>17</sup> 18 CFR Part 101 (1987) defines a major utility as one that has, in each of the last three consecutive years, sales or transmission service that exceeds any one or more of the following:

(1) One million megawatt-hours of total sales;  
(2) One hundred megawatt-hours of sales for resale;  
(3) Five hundred megawatt-hours of gross interchange out; or  
(4) Five hundred megawatt-hours of wheeling for others (deliveries plus losses).

<sup>18</sup> 44 U.S.C. 3501-20 (1982).

<sup>19</sup> 5 CFR 1320.12 (1987).

will be suspended and the Commission will issue a public notice to that effect.

#### List of Subjects in 18 CFR Part 116

Electric power plants, Electric utilities, Reporting and recordkeeping requirements, Uniform System of Accounts.

In consideration of the foregoing, the Commission amends Part 116 of Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,  
Acting Secretary.

#### PART 116—UNITS OF PROPERTY FOR USE IN ACCOUNTING FOR ADDITIONS AND RETIREMENTS OF ELECTRIC PLANT

1. The authority citation for Part 116 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7102-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Federal Power Act, 16 U.S.C. 791a-828c (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601-2645 (1982).

2. In Instruction 6, List of General Retirement Units, items (a) through (q) are redesignated as items (1) through (17), respectively, and redesignated item (11) is amended by deleting the term "(non-nuclear)".

3. Account No. 322 is revised to read as follows:

#### 322 Reactor Plant Equipment

##### Boiling Water Reactor

- A. Reactor:
  1. Reactor vessel internals.
  2. Reactivity control systems.
  3. Reactor vessels and appurtenances.
  4. Reactor trip systems.
- B. Reactor Coolant System and Connected Systems:
  1. Coolant recirculation systems and controls.
  2. Main steam systems and controls.
  3. Main steam isolation systems and controls.
  4. Reactor core isolation cooling systems and controls.
  5. Residual heat removal systems and controls.
  6. Feedwater systems and controls.
  7. Reactor coolant pressure boundary leakage detection system (When not part of another retirement unit).
  8. Other coolant subsystems and controls (not included as an item elsewhere).
  9. Engineered safety feature instrument systems.
  10. Systems required for safe shutdown.



## 11. Safety related display instrumentation.

## 12. Coolant injection systems.

## 13. Other instrument systems.

## C. Containment System:

## 1. Reactor containment.

## 2. Containment heat removal systems and controls.

## 3. Containment air purification and cleanup systems and controls.

## 4. Containment isolation systems and controls.

## 5. Containment combustible gas control systems and controls.

## 6. Other containment systems and controls.

## D. Fuel Storage and Handling Systems:

## 1. New fuel storage equipment and/or racks.

## 2. Spent fuel storage equipment and/or racks.

## 3. Spent fuel pool cooling and cleanup systems and controls.

## 4. Fuel handling systems.

## E. Auxiliary Water Systems:

## 1. Cooling systems for reactor auxiliaries and controls.

## F. Auxiliary Process Systems:

## 1. Process sampling system.

## 2. Failed fuel detection systems.

## 3. Reactor coolant cleanup systems and controls.

## 4. Liquid poison systems and controls.

## G. Radioactive Waste Management Systems:

## 1. Liquid radioactive waste management systems.

## 2. Gaseous radioactive waste management systems.

## 3. Process and effluent radiological monitoring systems.

## 4. Solid radioactive waste management systems.

## H. Radiation Protection Systems:

## 1. Area monitoring systems.

## 2. Airborne radioactivity monitoring systems.

## 3. Control room habitability systems and controls.

## I. Other Systems:

## 1. Auxiliary boiler system.

## 2. Control air systems.

## 3. Service water system.

## 4. Vent and drain system.

## 5. Ventilating equipment.

## 6. Water supply and purification or cleanup system.

Note: See list of general retirement units.

*Pressurized Water Reactor*

## A. Reactor:

## 1. Reactor vessel internals.

## 2. Reactivity control systems.

## 3. Reactor vessels and appurtenances.

## 4. Reactor trip systems.

## B. Reactor Coolant System and Connected Systems:

## 1. Coolant recirculation systems and controls.

## 2. Main steam systems and controls.

## 3. Main steam isolation systems and controls.

## 4. Emergency core cooling systems and controls.

## 5. Residual heat removal systems and controls.

## 6. Feedwater systems and controls.

## 7. Reactor coolant pressure boundary leakage detection systems (when not part of another retirement unit).

## 8. Other coolant subsystems and controls (not included as an item elsewhere).

## 9. Engineered safety feature instrument systems.

## 10. Systems required for safe shutdown.

## 11. Safety related display instrumentation.

## 12. Other instrument systems.

## C. Containment Systems:

## 1. Reactor containment.

## 2. Containment air purification and cleanup systems and controls.

## 4. Containment isolation systems and controls.

## 5. Containment combustible gas control systems and controls.

## 6. Other containment systems and controls.

## D. Fuel Storage and Handling Systems:

## 1. New fuel storage equipment and/or racks.

## 2. Spent fuel storage equipment and/or racks.

## 3. Spent fuel cooling and cleanup systems and controls.

## 4. Fuel handling systems.

## E. Auxiliary Water Systems:

## 1. Cooling systems for reactor auxiliaries and controls.

## F. Auxiliary Process System:

## 1. Process sampling system.

## 2. Failed fuel detection system.

## 3. Chemical and volume control systems and controls.

## G. Radioactive Waste Management Systems:

## 1. Liquid radioactive waste management systems.

## 2. Gaseous radioactive waste management systems.

## 3. Process and effluent radiological monitoring systems.

## 4. Solid radioactive waste management systems.

## H. Radiation Protection Systems:

## 1. Area monitoring systems.

## 2. Airborne radioactivity monitoring systems.

## 3. Control room habitability systems and controls.

## I. Other Systems:

## 1. Auxiliary boiler system.

## 2. Control air systems.

## 3. Service water system.

## 4. Vent and drain system.

## 5. Ventilating equipment.

## 6. Water supply and purification or cleanup system.

Note: See list of general retirement units.

*High Temperature Gas Reactor*

## A. Reactor:

## 1. Reactor.

## 2. Reactor reflector system.

## B. Reactor Coolant System and Connected Systems:

## 1. Primary coolant systems and controls.

## 2. Secondary coolant systems and controls.

## 3. Feedwater and condensate system and controls.

## 4. Reactor plant piping.

## 5. Hydraulic power systems and controls.

## 6. Moisture monitoring control system.

## 7. Linear neutron flux monitor and control rod calibration.

## 8. Analytical depressurization box controls.

## 9. Analytical liquid sampling control system.

## 10. Analytical gaseous sampling control system.

## 11. Tritium monitoring control system.

## C. Fuel Storage and Handling System:

## 1. Fuel storage systems and controls.

## 2. Fuel handling systems and controls.

## D. Radioactive Waste Management Systems:

## 1. Radioactive liquid waste management systems and controls.

## 2. Radioactive gaseous waste management systems and controls.

## 3. Decontamination systems and controls.

## E. Radiation Protection Systems:

## 1. Air monitor control systems and controls.

## F. Auxiliary Boiler System.

## G. Alternate Cooling Method.

Note: See list of general retirement units.

[FR Doc. 87-27102 Filed 11-24-87; 8:45 am]

BILLING CODE 6717-01-M

**18 CFR Part 389**

[Docket Nos. RM87-3-000 et al.]

**Annual Charges Under Omnibus Budget Reconciliation Act of 1986**

Issued November 18, 1987.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule; notice of OMB control numbers.

**SUMMARY:** On May 29, 1987, the Federal Energy Regulatory Commission



(Commission) issued a final rule<sup>1</sup> establishing procedures by which the Commission assesses and collects annual charges as required by the Omnibus Budget Reconciliation Act of 1986 (Act).<sup>2</sup> This notice states the Office of Management and Budget (OMB) Control Numbers for §§ 154.38(d)(6), 375.306, 375.307, 375.308, and 382.101-382.203 of the Commission's regulations which implemented the Act.

**EFFECTIVE DATE:** November 18, 1987.

**FOR FURTHER INFORMATION CONTACT:**

Roland M. Frye, Jr., Pipeline Rates, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8308.

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act, 44 U.S.C. 3501-3520 (1982), and the OMB regulations, 5 CFR Part 1320 (1987), require that OMB approve certain information collection requirements imposed by agency rules. On October 22, 1987, OMB gave final approval for the information collection requirements of §§ 382.105(a) and 382.201(b)(4), and issued Control Number 1902-0132 for these sections. These sections became effective on May 29, 1987, after OMB granted 90-day approval of the information collection requirements of these regulations.

On October 8, 1987, OMB gave final approval for the information collection requirements of § 154.38(d)(6) and issued Control Number 1902-0070 for this section. On May 28, 1987, OMB had given emergency 90-day approval of the information collection requirements of this section. The Commission in its September 16, 1987 rehearing order revised the requirements contained in § 154.38(d)(6)(ii). Section 154.38(d)(6) as promulgated in the final rule became effective on May 29, 1987, the issuance date of the final rule, and the revisions of § 154.38(d)(6)(ii), which were promulgated in the rehearing order, became effective on October 8, 1987, the OMB final approval date.

On September 29 and 30, 1987, OMB gave final approval for those information collection requirements of

FERC Form Nos. 2 and 2-A respectively which were imposed under the final rule, clarification order and rehearing order. OMB issued Control Number 1902-0028 for the requirements in Form No. 2 and Control Number 1902-0030 for the requirements in Form No. 2-A. On May 28, 1987, OMB had given emergency 90-day approval of those requirements. On June 16, 1987, OMB declared that the May 28, 1987 emergency clearance of the changes in Form Nos. 2 and 2-A also applied to the June 17, 1987 clarification order's revisions of the reporting requirements. In its September 16, 1987 rehearing order, the Commission further revised the reporting requirements for these two forms. The reporting requirements of Form Nos. 2 and 2-A as set forth in the final rule and clarification order became effective on May 29, 1987, the issuance date of the final rule; the revisions to the requirements of Form No. 2 as set forth in the rehearing order became effective on September 29, 1987, the OMB final approval date; and the revisions to the requirements of Form No. 2-A as set forth in the rehearing order became effective September 30, 1987, the OMB final approval date.

On September 28, 1987, OMB approved the information collection requirements for FERC Form No. 6 which were imposed under the rehearing order. OMB issued Control Number 1902-0022 for these requirements. Therefore, the reporting requirements of Form No. 6 as set forth in the rehearing order became effective on September 28, 1987, the OMB approval date.

Accordingly, Part 389, Chapter I, title 18, Code of Federal Regulations is amended as set forth below:

**PART 389—OMB CONTROL NUMBERS FOR COMMISSION INFORMATION COLLECTION REQUIREMENTS**

1. The authority citation for Part 389 continues to read as follows:

**Authority:** Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

**§ 389.101 [Amended]**

2. The table of OMB Control Numbers in § 389.101(b) is amended by inserting "382.105(a)" and "382.201(b)(4)" in numerical order in the section column, and "0132" in both corresponding positions in the OMB Control Number column.

**Lois D. Cashell,**  
*Acting Secretary.*

[FR Doc. 87-27101 Filed 11-24-87; 8:45 am]

**BILLING CODE 6717-01-M**

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**23 CFR Part 635**

**Construction and Maintenance;  
Contract Procedures**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FHWA is amending 23 CFR Part 635, Subparts A, B, and C to implement section 111(a) of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987 enacted on April 2, 1987, and to make other technical amendments. Section 111(a) of the STURAA amends section 112(b) of Title 23, United States Code, by adding emergency situations to the conditions under which a Federal-aid project may be awarded by a method other than competitive bidding. The provisions contained in 23 CFR Part 635 addressing contract procedures and force account construction for Federal-aid highways are revised to reflect the statutory amendment.

**EFFECTIVE DATE:** November 25, 1987.

**FOR FURTHER INFORMATION CONTACT:**

Mr. William A. Weseman, Chief, Construction and Maintenance Division, (202) 366-1548, or Ms. Ruth R. Anders, Office of Chief Counsel, (202) 366-0780, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., E.T., Monday through Friday, except legal holidays.

**SUPPLEMENTARY INFORMATION:** The Surface Transportation and Uniform Relocation Act of 1987 (Pub. L. 100-17, 101 Stat. 132) was enacted on April 2, 1987. Section 111(a) of the STURAA amended the provisions of 23 U.S.C. 112(b), Letting of Contracts, to permit noncompetitive contracting under emergency conditions. Section 112(b) previously permitted noncompetitive bidding only if demonstrated to be more cost effective. Under the provisions of section 111(a) of the STURAA, noncompetitive contracting may now be approved based on either of two conditions: (1) It is more cost effective or (2) an emergency exists.

**Discussion of Amendments**

In Subpart A—Contract Procedures—Section 635.103 is amended by removing the outdated reference to § 635.113(h) which was removed at 47 FR 36634 on August 26, 1982. Section 635.104, Method of Construction, is revised to incorporate the statutory amendment

<sup>1</sup> 52 FR 21263 (June 5, 1987), (Docket No. RM87-3-000).

<sup>2</sup> Act of October 21, 1986, Pub. L. 99-509, Title III, Subtitle E, Section 3401, 1986 U.S. Code Cong. & Ad. News (100 Stat.) 1874, 1890-1891 (to be codified at 42 U.S.C. 7178).

On June 17, 1987, the Commission issued an Order Clarifying Final Rule, 52 FR 23650 (June 24, 1987), and on September 16, 1987, the Commission issued an Order Granting Rehearing in Part, Denying Rehearing in Part, and Making Conforming Amendments, 52 FR 36013 (Sept. 25, 1987), both of which orders revised the Commission's annual charges procedures.



that permits waiving competitive bidding in an emergency situation. Also the first word of paragraph (a) has been changed for clarity to read "Unless" rather than "Except."

In Subpart B—Force Account Construction—Section 635.203, Definitions, is revised by adding to the definition of "some other method of construction" the exceptions of (1) emergency repairs immediately after the occurrence of a natural disaster over a wide area or catastrophic failure in accordance with 23 CFR Part 668 and (2) an emergency in accordance with 23 CFR 635.204(b). Further, a definition for an "emergency" has been added, pursuant to section 111(a) of the STURAA, to cover those situations in which the magnitude of the failure of the highway facility is not to the extent covered by 23 CFR Part 668, Emergency Relief Program, but is of such a serious nature and warrants such an urgent action by the SHA, to preclude the competitive bidding process. Sections 635.204 and 635.205 have been reformed for clarification and to incorporate the newly enacted statutory provisions. Paragraph (b) of § 635.204 (now transferred into paragraph (a) of § 635.205) is corrected by changing the first "of" in the first sentence to read "or." The requirement for a finding of cost effectiveness for emergency repairs, previously included in § 635.205, is now unnecessary because of the statutory amendment; therefore, it has been deleted.

In Subpart C—Physical Construction Authorization—Section 635.309 is amended to incorporate into paragraph (e) the statutory amendment that permits waiving competitive bidding if an emergency exists, and by changing the word "used" on the fourth line of the first paragraph to read "issued."

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or significant regulation under the regulatory policies and procedures of the Department of Transportation. The amendments in this document substantially reflect the statutory language mandated by section 111(a) of the STURAA of 1987. The other revisions contained in this document are technical in nature and make no substantive changes to the regulations. Therefore, the FHWA finds good cause to make the amendments final without notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act. Notice and opportunity for comment are not required under the regulatory policies and procedures of the DOT

because it is not anticipated that such action would result in the receipt of useful information due to the ministerial and technical nature of the document. A full regulatory evaluation is not required because any impacts that will occur are mandated by the statutory provisions themselves.

In consideration of the foregoing, the FHWA is amending Part 635, Subparts A, B, and C of Title 23, Code of Federal Regulations, as set forth below.

(Catalog of Federal Domestic Assistance Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

#### List of Subjects in 23 CFR Part 635

Government contracts, Grant programs—transportation, Highways and roads.

Issued on: November 18, 1987.

R.D. Morgan,  
Executive Director, Federal Highway Administration.

The Federal Highway Administration hereby amends Title 23, Code of Federal Regulations, Chapter I, Part 635, as set forth below.

#### PART 635—CONSTRUCTION AND MAINTENANCE

1. The authority citation for Part 635 continues to read as follows:

Authority: 23 U.S.C. 112, 113, 114, 117, 128, and 315; 31 U.S.C. 6506; 42 U.S.C. 3334, 4601 *et seq.*; 49 CFR 1.48(b).

#### Subpart A—Contract Procedures

2. Revise § 635.103 to read as follows:

##### § 635.103 Applicability

The policies, requirements, and procedures prescribed in this subpart, subject to certain modifications as provided in § 635.105(e), apply to all Federal-aid highway projects except those constructed under a Certification Acceptance Plan to which only §§ 635.107(e) and 635.108(c) shall apply.

3. In § 635.104, the first sentence of paragraphs (a) and (b) are revised as follows:

##### § 635.104 Method of construction.

(a) Unless, as provided in paragraph (b) of this section, the State highway agency demonstrates to the satisfaction of the Division Administrator that some other method is more cost effective or that an emergency exists, actual construction work shall be performed by contract awarded to the lowest responsible bidder. \* \* \*

(b) When the Division Administrator finds that it is cost effective or that an emergency exists, construction work may be performed by some method other than by contract awarded by competitive bidding pursuant to requirements and procedures prescribed by him/her. \* \* \*

#### Subpart B—Force Account Construction

4. In § 635.203, the first sentence of paragraph (b) is revised and paragraph (f) is added as follows:

##### § 635.203 Definitions.

(b) Except as provided for as emergency repair work in § 668.105(i) and in § 635.204(b), the term "some other method" of construction as used in 23 U.S.C. 112(b) shall mean the "force account" method of construction as defined herein. \* \* \*

(f) For the purpose of this part, an "emergency" shall be deemed to exist when emergency repair work as provided for in § 668.105(i) is necessary or when a major element or segment of the highway system has failed and the situation is such that competitive bidding is not possible or is impractical because immediate action is necessary to:

- (1) Minimize the extent of the damage,
- (2) Protect remaining facilities, or
- (3) Restore essential travel.

This definition of "emergency" has no applicability to the Emergency Relief Program of 23 CFR Part 668.

5. Section 635.204 is revised to read as follows:

##### § 635.204 Determination of more cost effective method or an emergency

(a) Congress has expressly provided that the contract method based on competitive bidding shall be used by a State highway agency or county for performance of highway work financed with the aid of Federal funds unless the State highway agency demonstrates, to the satisfaction of the Secretary, that some other method is more cost effective or that an emergency exists.

(b) When a State highway agency determines it necessary due to an emergency to undertake a federally financed highway construction project by force account or negotiated contract method, it shall submit a request to the Division Administrator identifying and describing the project, the kinds of work to be performed, the method to be used, the estimated costs, the estimated Federal Funds to be provided, and the



reason or reasons that an emergency exists.

(c) Except as provided in paragraph (b) of this section, when a State highway agency desires that highway construction work financed with the aid of Federal funds, other than the kinds of work designated under § 635.205(b), be undertaken by force account, it shall submit a request to the Division Administrator identifying and describing the project and the kind of work to be performed, the estimated costs, the estimated Federal funds to be provided, and the reason or reasons that force account for such project is considered cost effective.

(d) The Division Administrator shall notify the State highway agency in writing of his/her determination.

6. Section 635.205 is revised to read as follows:

**§ 635.205 Finding of cost effectiveness.**

(a) It may be found cost effective for a State highway agency or county to undertake a federally financed highway construction project by force account when a situation exists in which the rights or responsibilities of the community at large are so affected as to require some special course of action, including situations where there is a lack of bids or the bids received are unreasonable.

(b) Pursuant to authority in 23 U.S.C. 112(b), it is hereby determined that by reason of the inherent nature of the operations involved, it is cost effective to perform by force account the adjustment of railroad or utility facilities and similar types of facilities owned or operated by a public agency, a railroad, or a utility company provided that the organization is qualified to perform the work in a satisfactory manner. The installation of new facilities shall be undertaken by competitive bidding except as provided in § 635.204(c). Adjustment of railroad facilities shall include minor work on the railroad's operating facilities routinely performed by the railroad with its own forces such as the installation of grade crossing warning devices, crossing surfaces, and minor track and signal work. Adjustment of utility facilities shall include minor work on the utility's existing facilities routinely performed by the utility with its own forces and includes minor installations of new facilities to provide power, minor installations of new facilities to provide power, minor lighting, telephone, water and similar utility service to a rest area, weigh-station, movable bridge, or other highway appurtenance, provided such installation cannot feasibly be done as

incidental to a major installation project such as an extensive highway lighting in system.

7. In § 635.309, revise the introductory text and paragraph (e) to read as follows:

**§ 635.309 Authorization.**

Authorization to advertise the physical construction for bids or to proceed with force account construction thereof shall normally be issued as soon as, but not until, all of the following conditions have been met:

(e) An affirmative finding of cost effectiveness or that an emergency exists has been made as required by 23 U.S.C. 112, when construction by some method other than contract based on competitive bidding is contemplated.

[FR Doc. 87-27123 Filed 11-24-87; 8:45 am]  
BILLING CODE 4910-22-M

## DEPARTMENT OF JUSTICE

### 28 CFR Part 19

[Order No. 1239-87]

#### Use of Penalty Mail in Location and Recovery of Missing Children

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This regulation authorizes the Department of Justice (DOJ), through its component organizational units, to use penalty mail to aid in the location and recovery of missing children. The regulation further provides procedures under which penalty mail may be used for this purpose in accordance with the requirements of 39 U.S.C. 3220(a)(2) (Pub. L. 99-87, 99 Stat. 290, August 9, 1985) and in conformance with the Office of Juvenile Justice and Delinquency Prevention (OJJDP) guidelines published in the *Federal Register* on November 8, 1985 (50 FR 46622), pursuant to 39 U.S.C. 3220(a)(1).

**EFFECTIVE DATE:** This final rule is effective November 25, 1987.

**FOR FURTHER INFORMATION CONTACT:**

Principal Program Contact: Patricia Schellman, General Services Staff, Justice Management Division, U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington, DC 20530, telephone (202) 633-2353.

**SUPPLEMENTARY INFORMATION:** The enactment of Pub. L. 99-87, 99 Stat. 290, August 9, 1985, is indicative of the increased public concern with the problem of missing and exploited

children. The Missing Children's Assistance Act of 1984, added as Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended by the Comprehensive Crime Control Act of 1984 (Pub. L. 98-473, October 12, 1984), recognized the usefulness of a supplementary Federal coordination and assistance role because of the interstate nature of the missing children problem. Title IV authorized the establishment and funding of a National Center for Missing and Exploited Children (National Center). One highly successful activity of the Center has been the use of missing children photographs and biographical information in a variety of private sector initiatives. In passing Pub. L. 99-87, Congress has extended this activity to the Federal sector by authorizing the use of missing children photographs and biographical information in connection with official U.S. Government mail.

A notice and comment period is not required for this regulation because the subject matter of the regulation pertains to internal management procedures affecting only DOJ's use of penalty mail in the location and recovery of missing children. Internal factors such as DOJ mail management procedures, organizational structure, and the like have been primary considerations in drafting the regulation to structure the most cost effective implementation plan. The plan does not directly affect the rights and interests of the general public. For the same reasons, the rule is to be effective on the date of publication in the *Federal Register*.

#### Executive Order 12291

This announcement does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of \$100 million or more; (b) a major increase in any costs or prices; or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

#### Regulatory Flexibility Act

This final rule does not have "significant" economic impact on a substantial number of small "entities", as defined by the Regulatory Flexibility Act (Pub. L. 96-354).

#### Paperwork Reduction Act

There are no collection of information requirements contained in this regulation required to be submitted to the Office of Management and Budget



for review under the Paperwork Reduction Act, 44 U.S.C. 3504(h).

#### List of Subjects in 28 CFR Part 19

Administrative practice and procedure, Child welfare, Missing and exploited children, Penalty mail.

Accordingly, Title 28 Code of Federal Regulations is amended by adding Part 19 to read as follows:

#### PART 19—USE OF PENALTY MAIL IN THE LOCATION AND RECOVERY OF MISSING CHILDREN

Sec.

19.1 Purpose.

19.2 Contact person for Missing Children Penalty Mail Program.

19.3 Policy.

19.4 Cost and percentage estimates.

19.5 Report to the Office of Juvenile Justice and Delinquency Prevention.

19.6 Responsibility of DOJ organizational units for program implementation and implementation procedures.

Authority: 39 U.S.C. 3220(a)(2), 5 U.S.C. 301.

##### § 19.1 Purpose.

This regulation, providing for a Missing Children Penalty Mail Program in the Department of Justice (DOJ), is intended to comply with the regulation requirement set forth in section 1(a) of Public Law 99-87, which adds a new section 3220 to title 39, United States Code. The regulation also implements the Office of Juvenile Justice and Delinquency Prevention (OJJDP) guideline (50 FR 46622) promulgated under the authority of 39 U.S.C. 3220(a)(1), and is intended to assist in the location and recovery of missing children through the use of DOJ penalty mail.

##### § 19.2 Contact person for Missing Children Penalty Mail Programs.

The DOJ contact person for the Missing Children Penalty Mail Program is: Patricia Schellman, General Services Staff, Justice Management Division, U.S. Department of Justice, 10th and Constitution Ave., NW., Washington, DC 20530, Telephone Number (202) 633-2353.

##### § 19.3 Policy.

(a) The Department of Justice will supplement and expand the national effort to assist in the location and recovery of missing children by maximizing the economical use of missing children photographs and biographical information in domestic penalty mail directed to members of the public.

(b) Because the use of inserts printed with missing children photographs and biographical information has been

determined to be the most cost effective method for general application of the program, DOJ's first priority will be to insert, manually and via automated inserting equipment, photographs and biographical data related to missing children in a variety of types of penalty mail envelopes. These include:

(1) Standard letter-size envelopes (4 1/2" x 9 1/2");

(2) Document-size envelopes (9 1/2" x 12", 9 1/2" x 11 1/2", 10" x 13"); and

(3) Other envelopes (misc. size).

(c)(1) Maximum consideration will be given to the use of missing children materials with high volume printing plant or distribution plan mail that will be sent to the public or to Federal, State or local government agencies. Every effort will be made to use the most cost effective and efficient methods of obtaining, distributing, and disseminating missing children information.

(2) In instances when the printing of photograph(s) and biographical information directly on self-mailers and other publications (newsletters, bulletins, etc.) and/or on penalty mail envelopes proves to be practical and cost effective, this method may also be used. Photographs and biographical information related to missing children may be printed on the three types of penalty mail envelopes listed above.

(d) Missing children information shall not be placed on the "Penalty Indicia", "OCR Read Area", "Bar Code Read Area", and "Return Address" areas of standard letter-size envelopes per Appendix A of the OJJDP guideline as published in the November 8, 1985, *Federal Register* (50 FR 46625).

(e) The National Center for Missing and Exploited Children (National Center) will be the sole source from which DOJ will acquire the camera-ready and other photographic and biographical materials to be disseminated for use by DOJ organizational units. When printing missing children information, DOJ will select subjects in accordance with the schedule published by the National Center.

(f) DOJ will remove all printed penalty mail envelopes and other materials from circulation or other use (i.e.: Use or destroy) within a three month period from the date the National Center receives information or notice that a child whose photograph and biographical information have been made available to DOJ has been recovered or that the parent(s) or guardian's permission to use the child's photograph and biographical information has been withdrawn. The National Center will be responsible for

immediately notifying the DOJ contact person, in writing, of the need to withdraw penalty mail envelopes and other materials related to a particular child from circulation. Photographs which were reasonably current as of the time of the child's disappearance shall be the only acceptable form of visual media or pictorial likeness used on or in DOJ penalty mail.

(g) DOJ will give priority to penalty mail that:

(1) Is addressed to members of the public and will be received in the United States, its territories and possessions; and

(2) Is widely disseminated and read by DOJ employees such as inter- and intra-agency publications and other media.

(h) All DOJ employee suggestions, ideas or recommendations for innovative, cost-effective techniques for implementation of the Missing Children Penalty Mail Program should be forwarded to the DOJ contact person. DOJ Mail Managers shall hold biannual meetings to discuss the status of implementation of the current plan, and to consider recommendations to improve future plan implementation.

(i) This shall be the sole DOJ regulation implementing this program.

##### § 19.4 Cost and percentage estimates.

It is estimated that this program will cost DOJ \$78,000 during the initial year. This figure is based on estimates of printing, inserting, and administrative costs. It is DOJ's objective that 50 percent of DOJ penalty mail contain missing children photographs and biographical information by the end of the first year of the program.

##### § 19.5 Report to the Office of Juvenile Justice and Delinquency Prevention.

DOJ will compile and submit to OJJDP, by June 30, 1987, a consolidated report on its experience in implementation of 39 U.S.C. 3220(a)(2), the OJJDP guidelines and the DOJ regulation. The report will consolidate information gathered from individual DOJ organizational units and cover the period February 5, 1986 through March 31, 1987. The report will provide the following information:

(a) DOJ's experience in implementation, including problems encountered, successful and/or innovative methods adopted to use missing children photographs and information on or in penalty mail, the estimated number of pieces of penalty mail containing such information, and the estimated percentage of total agency penalty mail, domestic penalty mail, and



domestic penalty mail directed to members of the public which this number represents.

(b) The *estimated* total cost to implement the program, with supporting detail (for example, printing cost, hours of labor or labor cost, cost related to withdrawal of photographs, etc.).

(c) Recommendations for changes in the program which would make it more effective.

**§ 19.6 Responsibility of DOJ organizational units for program implementation and implementation procedures.**

(a) The General Services Staff, Justice Management Division (JMD), will be the liaison between the National Center and the principal organizational units of the Department. The General Services Staff, JMD shall be responsible for:

(1) Developing and disseminating Departmentwide guidelines and monitoring the implementation of the Missing Children Penalty Mail Program.

(2) Ordering camera-ready copies and other photographic and biographical material from the National Center, using the format established by the Center, and distributing the material within the Department of Justice.

(3) Immediately notifying DOJ components, in writing, of the need to use or withdraw from circulation, within 90 days, penalty mail envelopes, inserts and other material related to a recovered child or child whose parent(s) or guardian has withdrawn consent to use the photograph and biographical information. See 28 CFR § 0.1, Organizational Structure of the Department of Justice, for a listing of DOJ principal organizational units designated as components.

(4) Collecting, analyzing and consolidating cost, mail volume data and other program related information and reporting to OJJDP, by June 30, 1987, on DOJ's experience in implementing the program.

(5) Conducting biannual meetings with selected components contacts to discuss current plans and solicit suggestions and/or recommendations for innovative and cost effective techniques to enhance the success of the program.

(6) Providing guidance and assistance to components in internal program development and implementation.

(7) Maintaining a list of DOJ personnel assigned to serve as Missing Children Program Coordinators for the components.

(b) Bureau Mail Managers and components Executive/Administrative Officers shall be responsible for:

(1) Establishing and implementing internal procedures and guidelines for

the dissemination and use of missing children photographs and biographical information on or in domestic penalty mail. For example, the Bureau Mail Manager will provide guidance to Bureau offices on the types of missing children information which are available for use on or in penalty mail and establish procedures for obtaining and using the information, as appropriate.

(2) Identifying and reviewing publications and other Bureau media for suitable use in disseminating missing children photographs and information and obtaining approval for its use from the originating office.

(3) Ensuring that all printed penalty mail envelopes, inserts, and other penalty mail material containing photographs and biographical information on a missing child are used or removed from circulation or other use within 90 days from the date of DOJ notification by the National Center to withdraw material for that child.

(4) Designating Missing Children Coordinator(s) at headquarters and in each component and field office participating in the program.

(5) Arranging for printing and/or acquisition through designated channels, adequate supplies of inserts or penalty mail envelopes and other materials containing photographs and biographical data related to missing children.

(6) Collecting and reporting to the General Services Staff, Justice Management Division, the information identified in § 19.5 above as required for inclusion in the DOJ's consolidated report to OJJDP.

(c) Component and Bureau Missing Children Program Coordinators shall be responsible for:

(1) Insuring that adequate supplies of envelopes or inserts are ordered, received or disseminated for use within the organizational unit or requesting camera-ready copy for printing from the DOJ contact person using a written form to be established by DOJ Guideline.

(2) Ensuring that the acquisition and use of missing children information through inserts or printing of these materials in publications or on envelopes is approved by appropriate authority within the organizational unit.

(3) Maintaining and disseminating supplies of inserts, envelopes, and camera-ready copy (for publications) to personnel who prepare domestic penalty mail for dispatch through the U.S. Postal Service.

(4) Notifying employees within their organizational unit to use or remove from circulation all printed penalty mail envelopes, inserts, and other material

containing a photograph and biographical information on a missing child within 90 days from the date of DOJ notification by the National Center to withdraw material for that child.

(5) Serving as the central point of contact within their organizations for all matters relating to the Missing Children Penalty Mail Program.

(6) Collecting and reporting essential management information relating to the implementation of this program within their organizational unit and reporting this information to the appropriate Bureau Mail Manager or component Executive/Administrative Officer.

(d) Missing children pictures and biographical information shall not be:

(1) Printed on penalty mail envelopes, inserts, or other materials which are ordered and/or stocked in quantities which represent more than a 90 day supply.

(2) Printed on blank pages or covers of publications that may be included in the Superintendent of Documents' Sales Program or are to be distributed to depository libraries.

(3) Inserted in any envelope and/or publication the contents of which may be construed to be inappropriate for association with the Missing Children Penalty Mail Program.

(e) Each component shall provide the General Services Staff, Justice Management Division, with the name(s), telephone number(s) and mailing address(es) of each designated Missing Children Program Coordinator within 30 days of the effective date of this regulation.

(f) Each component shall submit a quarterly report to the General Services Staff, Justice Management Division, within 5 days after the close of each Fiscal Year quarter providing the specific information identified in § 19.5 concerning implementation and participation in the program.

Date: October 29, 1987.

Edwin Meese III,  
Attorney General.

[FR Doc. 87-27134 Filed 11-24-87; 8:45 am]  
BILLING CODE 4410-01-M

## DEPARTMENT OF DEFENSE

### Department of the Army.

#### 32 CFR Part 537

#### Claims on Behalf of the United States

AGENCY: Department of the Army, DOD.

ACTION: Final rule.



**SUMMARY:** The Department of the Army announces a revision of the regulatory provisions controlling the processing and settlement of administrative claims filed in behalf of the Army. The revision is necessary because of the publication of a revised regulation, AR 27-20 (10 July 1987) (Claims), effective 10 August 1987, and the transfer of regulatory provisions concerning these claims from AR 27-40 to AR 27-20. This revision will inform third parties of the procedures controlling the processing and settlement of these administrative claims by the Army.

**EFFECTIVE DATE:** November 25, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. James A. Mounts, Jr., Deputy Director, U.S. Army Claims Service, Office of The Judge Advocate General, Fort Meade, Maryland 20755-5360, (301) 677-7622.

**SUPPLEMENTARY INFORMATION:** The revision to Part 537 reflects the new role of the United States Army Claims Service to manage affirmative claims for the U.S. Army.

#### Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as non-major. The effect of the final rule on the economy will be less than \$100 million.

#### Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

#### Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

#### List of Subjects in 32 CFR Part 537

Claims, Foreign claims, Tort claims.

Dated: October 22, 1987.

Jack F. Lane,

Colonel, J.A. Commanding, United States Army Claims Service, Office of The Judge Advocate General.

32 CFR Part 537 is revised to read as follows:

### PART 537—CLAIMS ON BEHALF OF THE UNITED STATES

Sec.

537.1 Claims for damage to or loss or destruction of Department of Army (DA) property.

537.2 Recovery of property unlawfully detained by civilians.

537.6 Maritime casualties; claims in favor of the United States.

537.7 Maritime claims.

#### Claims for the Reasonable Value of Medical Care Furnished by the Army

537.21 General.

537.22 Basic considerations.

537.23 Predemand procedures.

537.24 Post demand procedures.

Authority: Sec. 3012, 70A Stat. 157; 10 U.S.C. 3012.

#### § 537.1 Claims for Damage to or Loss or Destruction of Department of Army (DA) Property.

(a) *Purpose.* This section prescribes, within the limitations indicated in AR 27-20 and in paragraph (b) of this section, the procedures for the investigation, determination, assertion, and collection, including compromise and termination of collection action, of claims in favor of the United States for damage to or loss or destruction of Department of the Army (DA) property.

(b) *Applicability and scope.* (1) Other regulations establish systems of property accountability and responsibility; prescribe procedures for the investigation of loss, damage, or destruction by causes other than fair wear and tear in the service; and provide for the administrative collection of charges against military and civilian personnel of the United States, contractors and common carriers, and other individuals and legal entities from whom collection may be made without litigation. When the investigation so prescribed results in preliminary indication of pecuniary liability, and no other method of collection is provided, the matter is referred for action under this section. This relationship exists with regard to—

(i) Property under the control of the DA. (AR 735-11.)

(ii) Property of the Defense Logistics Agency in the custody of the DA.

(iii) Property of nonappropriated funds of the DA (except Army and Air Force Exchange Service property). See AR 215-1 and AR 215-2.

(iv) Federal property made available to the Army National Guard (ARNG). (AR 735-11.)

(2) This section does not apply to—

(i) Claims arising from marine casualties.

(ii) Claims for damage to property funded by civil functions appropriations.

(iii) Claims for damage to property of the DA and Air Force Exchange Service.

(iv) Reimbursements from agencies and instrumentalities of the United States for damage to property.

(v) Collection for damage to property by offset against the pay of employees of the United States, or against amounts owed by the United States to common carriers, contractors, and States.

(vi) Claims by the United States against carriers, warehousemen, insurers, and other third parties for amounts paid in settlement of claims by members and employees of the Army, or the Department of Defense (DOD), for loss, damage, or destruction of personal property while in transit or storage at Government expense.

(3) The commander of a major overseas command, as defined in paragraph (c)(5) of this section, is authorized to establish procedures for the processing of claims in favor of the United States for loss, damage, or destruction of property which may, to the extent deemed necessary, modify the procedures prescribed herein. Two copies of all implementing directives will be furnished Commander, U.S. Army Claims Service (USARCS). Procedures will be prescribed—

(i) To carry out the provisions of DOD Directive No. 5515.8, assigning single service claims responsibility.

(ii) To carry out provisions of treaties and other international agreements which limit or provide special methods for the recovery of claims in favor of the United States.

(c) *Definitions.* For the purpose of this section only, the following terms have the meaning indicated:

(1) *Claim.* The Government's right to compensation for damage caused to Army property.

(2) *Prospective defendant.* An individual, partnership, association, corporation, governmental body, or other legal entity, foreign or domestic, except an instrumentality of the United States, against whom the United States has a claim.

(3) *Damage.* A comprehensive term, including not only damage to, but also loss or destruction of Army property.

(4) *DA property.* Real or personal property of the United States or its instrumentalities and, if the United States is responsible therefor, real or personal property of a foreign government, which is in the possession or under the control of the DA, one of its instrumentalities, or the ARNG, including that property of an activity for which the Army has been designated the administrative agency, and that property located in an area in which the Army



has been assigned single service claims responsibility by appropriate DOD directive.

(5) *Major overseas command.* U.S. Army Europe; U.S. Army Forces Southern Command; Eighth U.S. Army, Korea; Western Command; and any command outside the continental limits of the contiguous States specially designated by The Judge Advocate General (TJAG) under the provisions of AR 27-20.

(6) *Area Claims Office.* The principal office for the investigation, assertion, adjudication and settlement of claims, staffed with qualified legal personnel under the supervision of a Staff Judge Advocate (SJA) or Command Judge Advocate or Corps of Engineers district or Command Legal Counsel under provisions of AR 27-20.

(7) *Recovery judge advocate (RJA).* A JAGC officer or legal adviser responsible for assertion and collection of claims in favor of the United States for medical expenses and property damage.

(d) *Limitation of time.* The Act of July 18, 1966 (80 Stat. 304, 28 U.S.C. 2415) established a 3-year statute of limitations, effective July 19, 1966, upon actions in favor of the United States for money damages founded upon a tort. In computing periods of time excluded under 28 U.S.C. 2416, the RJA concerned shall be deemed the official charged with responsibility and will ensure that action may be brought in the name of the United States within the limitation period.

(e) *Foreign prospective defendants.* Except as indicated below, claims within the scope of this section against foreign prospective defendants will be investigated, processed, and asserted without regard to the nationality of the prospective defendant. Claims against an international organization, a foreign government or a political subdivision, agency, or instrumentality thereof, or against a member of the armed forces or an official or civilian employee of such international organization or foreign government, will not be asserted without prior approval of TJAG. Investigation and report thereof, together with recommendations regarding assertion and enforcement, will be forwarded through command channels to Commander, USARCS, unless the provisions of applicable agreements, or regulations in implementation thereof, negate the requirement for such investigation and report.

(f) *Standards of liability.* (1) The Government's right to compensation for damage caused to Army property will be determined in accordance with the law

of the place in which the damage occurred, unless other law may properly be applied under conflict of law rules.

(2) To the extent that the prospective defendant's liability is covered by insurance, liability will be determined without regard to standards of pecuniary liability set forth in other regulations. If no insurance is available, claims will be asserted under this section against military and civilian employees of the United States and of host foreign governments only where necessary to complete the collection of charges imposed upon such persons under the standards established by other regulations.

(g) *Concurrent claims under other regulations.* (1) Claims for damage to DA property and claims for medical care cognizable under §§ 537.21 through 537.24 arising from the same incident will be processed under the sections applicable to each.

(2) If the incident giving rise to a claim in favor of the United States also gives rise to a potential claim or suit against the United States, the claim in favor of the Government will be asserted and otherwise processed only by an RJA who has apparent authority to take final action on the claim against the Government.

(h) *Claims for less than \$250.* Such claims need not be asserted or otherwise processed under this section unless the facts and circumstances surrounding the incident indicate that collection will be economically feasible (for example, a good case of liability covered by insurance) or desirable in the best interests of the United States.

(i) *Repayment in kind.* The RJA who asserts a claim under this section may accept, in lieu of full payment of the claim, the restoration of the property to its condition prior to the incident causing the damage, or the replacement thereof. Acceptability of these methods of repayment is conditioned upon the certification of the appropriate staff officer responsible for maintenance, such as is described for motor vehicles in AR 735-11, before a release may be executed. The authority conferred by this paragraph is not limited to incidents involving motor vehicles.

(j) *Delegation of authority.* Subject to the provisions of paragraph (k) of this section, the authority conferred by AR 27-20, to compromise claims and to terminate collection action, with respect to claims that do not exceed \$20,000, exclusive of interest, penalties and administrative fees, is further delegated as follows:

(1) An Area Claims Office, as defined in paragraph (c)(6) of this section, is authorized to:

(i) Compromise claims, provided the compromise does not reduce the claim by more than \$10,000.

(ii) Terminate collection action, provided the uncollected amount of claim does not exceed \$10,000.

(2) The SJA, or if so designated, the chief of the Command Claims Service of a major overseas command, as defined in paragraph (c)(5) of this section, is authorized to:

(i) Compromise claims, not over \$20,000 without monetary limitations.

(ii) Terminate collection action, provided the uncollected amount of the claim does not exceed \$20,000.

(k) *Compromise and termination of collection action.* (1) The authority delegated in paragraph (j) of this section to compromise claims will be exercised in accordance with the standards set forth in 4 CFR Part 104.

(2) The authority delegated in paragraph (j) of this section to terminate collection action will be exercised in accordance with the standards set forth in 4 CFR Part 104.

(3) A debtor's liability to the United States arising from a particular incident shall be considered as a single claim in determining whether the claim is not more than \$20,000, exclusive of interest, penalties and administrative fees for the purpose of compromise, or termination of collection action.

(4) Only the Department of Justice may approve claims involving:

(i) Compromise or waiver of a claim asserted for more than \$20,000 exclusive of interest, penalties and administrative fees.

(ii) Settlement actions previously referred to the Department.

(iii) Settlement where a third party files suit against the United States or the individual federal tort feaser arising but of the same incident.

(l) *Releases.* The RJA who receives payment of the claim in full, or who receives full satisfaction of an approved compromise settlement, is authorized to execute a release. A standard form furnished by the prospective defendant or his insurer may be executed, provided no indemnity agreement is included.

(m) *Receipts.* The RJA may execute and deliver to a prospective defendant a receipt for payment in full, installment payment or an offered compromise payment, subject to approval of the SJA. DA Form 2135-R (Receipt for Payment for Damage to or Loss of Government Property) be used.



**§ 537.2 Recovery of property unlawfully detained by civilians.**

Whenever information is received that any property belonging to the military service of the United States is unlawfully in the possession of any person not in the military service, the procedures contained in AR 735-11, Para. 3-15, Unit Supply UPDATE 10, should be followed.

**§ 537.6 Maritime casualties; claims in favor of the United States.**

See 32 CFR 536.60, which covers claims on behalf of the United States as well as claims against the United States.

**§ 537.7 Maritime claims.****(a) Statutory authority.**

Administrative settlement or compromise of admiralty and maritime claims in favor of and against the United States by the Secretary of the Army or his designee, under the direction of the Secretary of Defense, is authorized by Army Maritime Claims Settlement Act of 1956 (70A Stat. 270), as amended (10 U.S.C. 4801-4804, 4806).

(b) *Related statutes.* This statute authorizes the administrative settlement or compromise of maritime claims and supplements the following statutes under which suits in admiralty may be brought; the Suits in Admiralty Act of 1920 (41 Stat. 525, 46 U.S.C. 741-752); the Public Vessels Act of 1925 (43 Stat. 1112, 46 U.S.C. 781-790); the Extension of the Admiralty Act of 1948 (62 Stat. 496, 46 U.S.C. 740). Similar maritime claims settlement authority is exercised by the Department of the Navy under title 10, United States Code (U.S.C.), sections 7365, 7621-7623, and by the Department of the Air Force under 10 U.S.C. 9801 through 9804, 9806.

(c) *Scope.* (1) Section 4803 of title 10, U.S.C., provides for the settlement or compromise of claims of a kind that are within the admiralty jurisdiction of a district court of the United States and of claims for damage caused by a vessel or floating object to property under the jurisdiction of the DA or property for which the Department has assumed an obligation to respond in damages, where the net amount payable to the United States does not exceed \$500,000.

(2) Section 4804 of title 10, U.S.C., for the settlement or compromise of claims in any amount for salvage services (including contract salvage and towage) performed by the DA for any vessel. The amounts of claims for salvage services are based upon per diem rates for the use of salvage vessels and other equipment; and materials and equipment damaged or lost during the salvage operation. The sum claimed is intended to compensate the United

States for operational costs only, reserving, however, the right of the Government to assert a claim on a salvage bonus basis, in accordance with commercial practice, in an appropriate case.

(d) *Amounts exceeding \$500,000.* Maritime claims in favor of the United States, except claims for salvage services, may not be settled or compromised under this section at a net amount exceeding \$500,000 payable to the United States. However, all such claims otherwise within the scope of this section will be investigated and reported to the Commander, USARCS.

(e) *Civil works activities.* Rights of the United States to fines, penalties, forfeitures, or other special remedies in connection with the protection of navigable waters, the control and improvement of rivers and harbors, flood control, and other functions of the Corps of Engineers involving civil works activities, are not dealt with in this section. However, claims for money damages which are civil in nature, arising out of civil works activities of the Corps of Engineers and otherwise under this section, for which an adequate remedy is not available to the Chief of Engineers, may be processed under this section.

(f) *Delegation of authority.* Where the amount to be received by the United States is not more than \$10,000, claims under this section, except claims for salvage services, paragraph (c)(2) of this section, may be settled or compromised by the Commander, USARCS, or designee, subject to such limitations as may be imposed by the Commander, USARCS and by engineer area claims offices, subject to such limitations as may be imposed by the Chief of Engineers.

(g) *Demands.* Demand for the payment of claims in favor of the United States under this section may be made by the Commander, USARCS, or designee.

**Claims for the Reasonable Value of Medical Care Furnished by the Army****§ 537.21 General.**

(a) *Authority.* The regulations in §§ 537.21-537.24 are in implementation of the Act of September 25, 1962 (76 Stat. 593, 42 U.S.C. 2651-3), Executive Order Number 11060 (27 FR 10925), and Attorney General's Order Number 289-62, as amended (28 CFR Part 43), providing for the recovery of the reasonable value of medical care furnished or to be furnished by the United States to a person on account of injury or disease incurred after December 31, 1962, under circumstances

creating a tort liability upon some third person.

(b) *Applicability and scope.* (1) Sections 537.21 through 537.24 apply to all claims for the reasonable value of medical services furnished by or at the expense of the Army which result from incidents occurring on or after March 1, 1969. Cases which arise from incidents occurring prior to that date:

(i) And which are the responsibility of an SJA or JA who is designated an RJA will be processed under §§ 537.21 through 537.24;

(ii) And which are the responsibility of an SJA or JA not so designated will be processed under the predecessor regulation until either completed or transferred.

(2) The procedures prescribed herein are to be employed within the DA for the investigation, determination, assertion, and collection, including compromise and waiver, in whole or in part, of claims in favor of the United States for the reasonable value of medical services furnished by or at the expense of DA. TJAG provides general supervision and control of the investigation and assertion of claims arising under the Federal Medical Care Recovery Act.

(3) In Continental U.S., Army SJA's and RJA's will be assigned responsibility under §§ 537.21 through 537.24 on a geographical area basis.

(4) The commander of any major overseas command specified in paragraph (c)(5) of this section is authorized to modify the procedures prescribed herein to accommodate any special circumstances which may exist in the command.

(5) Claims for medical care furnished by the DA on a reimbursable basis (see table 1, AR 40-3) ordinarily will be forwarded for processing directly to the Federal department or agency responsible for reimbursement.

(c) *Definitions.* For the purpose of §§ 537.21 through 537.24 only, the following terms have the meaning indicated.

(1) *Claim.* The Government's right to recover from a prospective defendant the reasonable value of medical care furnished to each injured party.

(2) *Medical care.* Includes hospitalization, out-patient treatment, dental care, nursing service, drugs, and other adjuncts such as prostheses and medical appliances furnished by or at the expense of the United States.

(3) *Injured party.* The person who received an injury or contracted a disease which resulted in the medical care. Such person may be an active duty or retired member, a dependent, or any



other person who is eligible for medical care at DA expense. See section III, AR 40-3, and §§ 577.60 through 577.71 of this chapter.

(4) *Prospective defendant.* A person other than the injured party. An individual partnership, association, corporation, governmental body, or other legal entity, foreign or domestic, against whom the United States has a claim.

(5) *Major overseas command.* U.S. Army Forces Southern Command; the U.S. Army, Europe; Eighth U.S. Army, Korea; Western Command; and any command outside the continental limits of the contiguous states specially designated by TJAG under the provisions of AR 27-20.

(6) *Recovery judge advocate.* A JAGC officer or legal adviser responsible for assertion and collection of claims in favor of the United States for medical expenses.

#### § 537.22 Basic considerations.

(a) *The right of recovery—(1) Applicable law.* The right of the United States to recover the reasonable value of medical care furnished or to be furnished an injured party is based on the Federal Medical Care Recovery Act. It accrues simultaneously with the accrual of the injured party's right to recover damages from the prospective defendant but is independent of any claim which the injured person may have against the prospective defendant. Recovery is allowed only if the injury or diseases resulted from circumstances creating a tort liability under the law of the place where the injury occurred.

(2) *Time limitation.* The Act of 18 July 1966 (28 U.S.C. 2415 et seq.) establishes a 3-year statute of limitation upon actions in favor of the United States for money damages founded upon a tort. The RJA will take appropriate steps within the limitation period to assure that necessary legal action is not barred by the statute.

(3) *Amount.* The Government's right of recovery is limited to amounts expended or to be expended by the United States for medical care from other than Federal sources, and to amounts determined by the rates established by the Office of Management and Budget for medical care from Federal sources, less any amounts reimbursed by the injured party.

(b) *Certain prospective defendants—(1) U.S. Government agencies.* No claim will be asserted against any department, agency, or instrumentality of the United States.

(2) *U.S. personnel.* Claims against a member of the uniformed services; or an employee of the United States, its

agencies or instrumentalities; or a dependent of a service member or an employee will not be asserted unless the prospective defendant has the benefit of liability insurance coverage or was guilty of gross negligence or willful misconduct. If simple negligence occurring in the scope of a member's or employee's employment is the basis of the claim, no claim will be asserted if such claim is excluded from the coverage of the liability insurance policy involved. No claim, in the absence of specific statutory authorization, will be made directly against a member or employee, or his or her dependents for injuries sustained to himself or herself through acts of simple negligence, gross negligence, or willful misconduct.

(3) *Government contractors.* Claims, the cost or expense of which may be reimbursable by the United States under the terms of a contract, will not be asserted against a contractor without the prior approval of USARCS. Such claims will be investigated and the report thereof, which will include citation to the specific contract clauses involved and recommendations regarding assertion will be forwarded through command channels to Commander, USARCS.

(4) *Foreign persons.* Claims within the scope of §§ 537.21 through 537.24 against foreign prospective defendants will be investigated, processed, and asserted without regard to the nationality of the prospective defendant, unless such action is precluded by treaty or international agreement. Claims against an international organization, or foreign government, will be investigated and reports thereof, together with recommendations regarding assertion and enforcement, will be forwarded through command channels to Commander, USARCS.

(5) *National Guard Members.* Claims arising from the tortious conduct of NG members will be investigated and if assertion appears appropriate, a recommendation shall be made to Commander, USARCS.

(c) *Concurrent claims under other regulations—(1) Section 537.1.* Claims for medical care and claims for damage to DA property arising from the same incident will be processed by the RJA in accordance with § 537.1(g). If an RJA lacks settlement authority sufficient to settle a concurrent claim under § 537.1, he may request additional authority under that section from the appropriate major overseas command SJA or area claims authority, who may delegate such additional authority in an amount not exceeding his own settlement authority. Where time is of the essence, telephonic delegations of authority are encouraged,

provided they are confirmed in a writing which will be made a part of the case file.

(2) *Counterclaims.* Claims for medical care and claims against the United States which arise from the same incident will be processed by the RJA in accordance with § 537.1(g)(2). If an RJA lacks authority sufficient to settle the claim against the Government, he will coordinate his action with that claims echelon which has the necessary authority to settle the particular claim against the United States.

(d) *Claims for less than \$250.* Such claims need not be asserted or otherwise processed, unless the facts and circumstances surrounding the incident indicate that collection will be economically feasible (for example, a good case of liability covered by insurance) or desirable in the best interests of the United States.

#### § 537.23 Predemand Procedures.

(a) *Relations with the injured party—(1) Advice.* The injured party, or, in appropriate cases, his guardian, next-of-kin, personal representative, or the executor or administrator of his estate, will be advised of the following:

(i) That under the Act of September 25, 1962 (76 Stat. 593, 42 U.S.C. 2651-3, the United States may be entitled to recover the reasonable value of medical care furnished or to be furnished him in the future from the person or persons who injured him, or who were otherwise responsible for his injury or disease; and

(ii) That if he is otherwise entitled to legal assistance under AR 27-3, he should seek guidance from a legal assistance officer regarding any claim he may have for personal injury; and

(iii) That he is required to cooperate in the prosecution of all actions of the United States against the person or persons who injured him; and

(iv) That he is required to furnish a complete statement regarding the facts and circumstances surrounding the incident which resulted in the injury or disease; and

(v) That he is required to furnish information concerning any legal action brought or to be brought by or against the prospective defendant, or to furnish the name and address of the attorney representing him; and

(vi) That he should not execute a release or settle any claim which he may have as a result of his injury without first notifying the RJA.

(2) *Statement.* A written statement will be obtained from the injured party, or his representative, in which he acknowledges receipt of the advice in paragraph (a)(1) of this section, and



provides the information required by paragraphs (a)(1) (iv) and (v) of this section. If the injured party or representative fails or refuses to furnish necessary information or cooperation, the originator of the notification of potential claims may be requested to withhold records as to medical history, diagnoses, findings, and treatment, from the injured party or anyone acting on his behalf pending compliance with the requirements in paragraph (a)(1) of this section. Mere refusal by the injured party or his representative to include the Government's claim in his claim is not sufficient basis, by itself, for this action.

(b) *Determination and assertion*—(1) *Liability*. The RJA will review all the evidence including any claims officer's report of investigation and, after assuring completeness of the file, will make a written determination as to the liability of the prospective defendant and note his reasons for such determination.

(2) *Value*. If the RJA determines that the prospective defendant is liable, he will also ascertain the reasonable value of medical care furnished or to be furnished to the injured party, in accordance with § 537.22(a)(3) and rates established by the Office of Management and Budget. When a military member has been retained in a military hospital for administrative reasons, or where the patient was absent from the hospital or was in a purely convalescent status, the amount of the claim will be recomputed to apply the outpatient rate, if under circumstances warranting only outpatient treatment in a civilian hospital or eliminate such periods altogether if the injured party received no treatment during those periods. In making these determinations the RJA will coordinate with the registrar or other responsible official of the hospital or medical unit in his area of responsibility.

(3) *Amount*. In the event of doubt concerning the extent of medical care furnished or to be furnished an injured party, the RJA will assert the claim in an indefinite amount. Demand will be made in a definite amount at the earliest possible date, based on an estimate of a reasonable value of medical care to be furnished, if appropriate. The RJA will assure that the file contains complete statements of the value of medical care furnished, including all charges by civilian physicians, medical technicians and civilian hospitals.

#### § 537.24 Post Demand Procedures.

(a) *Coordination with the injured party's claim*. (1) Every effort will be made to coordinate action to collect the

claim of the United States with the injured party's action to collect his own claim for damages, in order that the injured party's recovery for his damages, other than the reasonable value of medical care furnished or to be furnished by the United States, is not prejudiced by the Government's claim.

(2) Attorneys representing an injured party may be authorized to assert the Government's claim as an item of special damages in their client's claim or suit. Any agreement to this effect will be in writing, and the agreement should expressly recognize the fact that counsel fees may be neither paid by the Government (5 U.S.C. 3106) nor computed on the basis of the Government's portion of the recovery. The agreement must also require the Government's permission to settle. Attorneys may withdraw from such agreements on reasonable notice.

(3) If the injured party, denies or his attorney or legal representative, fails or refuses to cooperate in the prosecution of the claim of the United States, independent collection action will be vigorously pursued.

(b) *Independent collection action*. Unless suit between the injured party and the prospective defendant is pending, all available administrative collection procedures will be followed prior to reference of the claim to the Department of Justice under paragraph (e) of this section. Direct contact with the prospective defendant's insurer, if known, is desirable. If the prospective defendant is an uninsured motorist, timely and appropriate action will be taken to collect the claim, or to request suspension of driving and registration privileges under the applicable uninsured motorist fund statute, or to seek compensation from the victim's insurer, or otherwise under financial responsibility laws.

(c) *Delegation of authority*. Subject to the provisions of paragraphs (d) and (e) of this section, authority to compromise or waive, in whole or in part, claims of the United States not in excess of \$40,000 exclusive of interest penalties and administrative fees is delegated as follows:

(1) The Area Claims Office as defined in paragraph (c)(6) of § 537.1 is authorized to:

(i) Compromise claims, provided the compromise does not reduce the claim by more than \$15,000; and  
(ii) Waive claims for the convenience of the Government (but not on account of undue hardship upon the injured party) provided the uncollected amount of the claim does not exceed \$15,000.

(2) TJAG, The Assistant Judge Advocate General, Commander,

USARCS or designee and the SJA, or if so designated, the Chief of the Command Claims Service of a major overseas command as defined in paragraph (c)(5) of § 537.21 is authorized:

(i) To compromise without limitation; and

(ii) To waive, in whole or in part—

(A) For the convenience of the Government, or

(B) If he determines that collection thereof would result in undue hardship upon the injured party.

(d) *Compromise and waiver of claims*—(1) *General*. A debtor's liability to the United States arising from a particular incident will be considered as a single claim in determining whether the claim is not more than \$40,000, for the purpose of compromise or waiver. Claims not resolved within the delegation of authority stated in this section or referred to the Department of Justice, will be forwarded to Commander, USARCS. A claim file forwarded to higher authority will contain a memorandum of opinion supported by necessary exhibits.

(2) *Compromise*. (i) The authority delegated in paragraph (c) of this section to compromise claims will be exercised in accordance with standards set forth in 4 CFR Part 103. When available funds are insufficient to satisfy both the claim of the United States and that of the injured party, the claim of the United States will be compromised to the extent required to achieve an equitable apportionment of the available funds.

(ii) If appropriate, a request by the injured party or his attorney for waiver on the ground of undue hardship may be treated initially as a suggestion for compromise with the tortfeasor, and the compromised amount of the claim of the United States will be determined. In such cases, RJA's may make offers of compromise within their delegated authority. RJA's may also make counteroffers within their delegated authority to offers of compromise beyond their delegated authority. If settlement within the limits of delegated authority is not achieved, the claim will be referred to higher authority.

(iii) When time is a factor, SJA or major overseas command staff JA's may make telephonic delegation within their compromise authority on a case by case basis. When such verbal delegations are made, they will be confirmed in writing and the writing included in the case file.

(3) *Waiver*. (i) The authority delegated in paragraph (c) of this section to waive claims for the convenience of the Government will be exercised in



accordance with standards set forth in 4 CFR Part 103.

(ii) If the injured party or his attorney requests waiver of the full or any compromised amount of the claim on the ground of undue hardship, and the request may not be appropriately treated under paragraph (d)(2)(ii) of this section, the file will be forwarded to appropriate major overseas command claims authority or Commander, USARCS. For the purpose of evaluation of the request for waiver, the file will include detailed information concerning the reasonable value of the injured party's claim for permanent injury, pain and suffering, decreasing earning power, and other items of special damages, pension rights, and other Government benefits accruing to the injured party; and the present and prospective assets, income, and obligations of the injured party, and those dependent on him.

(iii) In the event an affirmative determination is made by TJAG that, as a result of the collection of the Government's claim the injured party has suffered an undue hardship, the RJA will be authorized to direct issuance of the amount waived to the injured party.

(4) A file forwarded to higher authority for waiver of compromise consideration will contain a memorandum by the RJA giving his assessment of the case and his recommendation with regard to the approval or denial of the requested compromise or waiver.

(e) *Only the Department of Justice may approve claims involving—*(1) compromise or waiver of a claim asserted for more than \$40,000 exclusive of interest, penalties or administrative fees.

(2) Settlement actions previously referred to the Department.

(3) Settlement where a third party files suit against the United States on the injured party arising out of the same incident.

[FR Doc. 87-26988 Filed 11-24-87; 8:45 am]  
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## VETERANS ADMINISTRATION DEPARTMENT OF DEFENSE

### 38 CFR Part 21

#### Veterans Education; Entitlement Charges for Overpayments Under VEAP

**AGENCY:** Veterans Administration and Department of Defense.

**ACTION:** Final regulations.

**SUMMARY:** Interest, administrative costs of collection, court costs, and marshal fees are now being charged on overpayments of educational assistance allowance. At times a veteran will discharge such a debt in bankruptcy, or the debt will be waived or compromised. The pertinent section of title 38 of the Code of Federal Regulations is amended to provide that when any of these actions occurs with regard to a debt incurred under the Post-Vietnam Era Veterans Educational Assistance Program (VEAP), an unrecovered portion of interest, administrative costs of collection, court costs or marshal fees will not result in a charge against a veteran's entitlement to educational assistance allowance.

**EFFECTIVE DATE:** September 2, 1987.

**FOR FURTHER INFORMATION CONTACT:** June C. Schaeffer (225), Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC (202) 233-2092.

**SUPPLEMENTARY INFORMATION:** On pages 17990 and 17991 of the *Federal Register* of May 13, 1987, there was published a notice of intent to amend Part 21 to provide a rule for making charges against entitlement when an overpayment of benefits under VEAP occurs and the recipient of the overpayment discharges the debt in bankruptcy or the debt is waived or compromised. Interested people were given 28 days to submit objections, suggestions or comments. The Veterans Administration (VA) and the Department of Defense received one letter on the subject. The letter writer stated that he had no comments to make. Accordingly, the VA and the Department of Defense are making the regulation final.

The VA and the Department of Defense have determined that this final regulation does not contain a major rule as that term is defined in E.O. 12291, entitled *Federal Regulation*. The regulation will not have a \$100 million annual effect on the economy, and will not cause a major increase in costs for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs and the Secretary of Defense have certified that this final regulation will not have a significant economic impact

on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the final regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.120.

### List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grants programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 2, 1987.

Thomas K. Turnage,  
Administrator.

Approved: October 15, 1987.

A. Lukeman,  
Lieutenant General, USMC, Deputy Assistant Secretary of Defense (Military Manpower and Personnel Policy).

In 38 CFR Part 21, Vocational Rehabilitation and Education, § 21.5076 is revised as follows:

#### § 21.5076 Entitlement charge— overpayment cases.

(a) *Overpayment cases.* The VA will make a charge against an individual's entitlement of an overpayment of educational assistance allowance only if:

- (1) The overpayment is discharged in bankruptcy; or
- (2) The VA waives the overpayment and does not recover it; or
- (3) The overpayment is compromised.

(Authority: 38 U.S.C. 1631)

(b) *Debt discharged in bankruptcy or is waived.* If the overpayment is discharged in bankruptcy or is waived and is not recovered, the entitlement charge will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(Authority: 38 U.S.C. 1631; Pub. L. 94-502)

(c) *Overpayment is compromised.* (1) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal



fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(2) If the overpayment is compromised and compromise offer is equal to or greater than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by—

(i) Subtracting from the sum paid in the compromise offer the amount attributable to interest, administrative costs of collection, court costs and marshal fees.

(ii) Subtracting the remaining amount of the overpayment balance determined in paragraph (c)(2)(i) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees),

(iii) Dividing the result obtained in paragraph (c)(2)(ii) of this section by the amount of the original debt (exclusive of interest, administrative costs of collection, court costs and marshal fees), and

(iv) Multiplying the percentage obtained in paragraph (c)(2)(iii) of this section by the amount of the entitlement otherwise chargeable for the period of the original overpayment.

[Authority: 38 U.S.C. 1631]

[FR Doc. 87-27062 Filed 11-24-87; 8:45 am]

BILLING CODE 8320-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[PP 7E3482, 7E3483, 7E3484/R920; FRL-3294-1]

### Pesticide Tolerances For Malathion

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes tolerances for the combined residues of the insecticide malathion in or on a variety of raw agricultural commodities. The Intergovernmental Research Project No. 4 (IR-4) petitioned for these tolerances.

**EFFECTIVE DATE:** Effective on November 25, 1987.

**ADDRESS:** Written objections, identified by the document control number, [PP 7E3482, 7E3483, 7E3484/R920], may be submitted to: Hearing Clerk (A-110),

Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

#### FOR FURTHER INFORMATION CONTACT:

Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1806.

#### SUPPLEMENTARY INFORMATION:

EPA issued a proposed rule, published in the *Federal Register* of August 27, 1987 (52 FR 32322), and corrected in the *Federal Register* of October 5, 1987 (52 FR 37246), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petitions 7E3482, 7E3483, and 7E3484 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Station of Hawaii.

The petitioner requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the combined residues of malathion (*O,O*-dimethyl dithiophosphate of diethyl mercaptosuccinate) in or on the raw agricultural commodity crop groups *Brassica* (cole) leafy vegetables group (7E3482), leafy vegetables (except *Brassica* vegetables) group (7E3483), and on the raw agricultural commodities chayote fruit and chayote roots (7E3484) at 8 parts per million (ppm). Tolerances have already been established on the representative commodities and additional commodities within the *Brassica* (cole) leafy vegetable group as follows: Broccoli, brussels sprouts, cabbage, cauliflower, collards, kale, kohlrabi, and mustard greens. With the establishment of the crop group tolerance, tolerances would also be established for residues of the insecticide in or on Chinese broccoli (gai lon), broccoli raab (rapini), Chinese cabbage (bok choy, napa), Chinese mustard cabbage (gai choy), and rape greens at 8 ppm. Tolerances have already been established on the representative commodities and additional commodities within the leafy vegetables (except *Brassica*) group as follows: Celery, dandelions, endive (escarole), lettuce, parsley, spinach, Swiss chard, and watercress at 8 ppm. With the establishment of the crop group tolerance, tolerances would also be established for residues of the

insecticide in or on amaranth (leafy amaranth, Chinese spinach, tampala), arrugula (Roquette), celtuce, chervil, corn salad, edible-leaved chrysanthemum, garland chrysanthemum, dock (sorrel), Florence fennel, orach, garden purslane, winter purslane, fine spinach, New Zealand spinach and rhubarb at 8 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petitions and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the *Federal Register*, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24950).

(Sec. 408(d), 68 Stat. 512 (21 U.S.C. 346a(d)))

#### List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 9, 1987.

Douglas D. Campit,  
Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

#### PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:



Authority: 21 U.S.C. 346a.

2. Section 180.111 is amended by (1) removing the already established tolerances for broccoli, Brussels sprouts, cabbage, cauliflower, celery, collards, dandelion, endive, kale, kohlrabi, lettuce, mustard greens, parsley, spinach, Swiss chard, and watercress now covered by the crop groups, and (2) by adding and alphabetically inserting the crop groups *Brassica* (cole) leafy vegetables and leafy vegetables (except *Brassica* vegetables) and the raw agricultural commodities chayote fruit and chayote roots, to read as follows:

**§ 180.111 Malathion; tolerances for residues.**

Commodities	Parts per million
Chayote fruit.....	8
Chayote roots.....	8
Vegetables, leafy, <i>Brassica</i> (cole).....	8
Vegetables, leafy (except <i>Brassica</i> ).....	8

[FR Doc. 87-26912 Filed 11-24-87; 8:45 am]

BILLING CODE 5560-50-M

**GENERAL SERVICES  
ADMINISTRATION**

**41 CFR Part 105-70**

**Implementation of the Program Fraud  
Civil Remedies Act of 1986**

**AGENCY:** General Services Administration.

**ACTION:** Final rule.

**SUMMARY:** This regulation provides for the implementation of the Program Fraud Civil Remedies Act of 1986, Pub. L. 99-509, October 21, 1986. It sets forth the General Services Administration's (GSA's) administrative process to recompense the Government for false, fictitious and fraudulent claims and statements. It also provides due process protection for all persons subject to that administrative process.

**EFFECTIVE DATE:** November 25, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frederick P. Hink, Associate General Counsel, Personal Property Division (LP), Office of General Counsel, General Services Administration, 18th & F Streets, NW., Washington, DC 20405. Telephone No. (202) 566-1156.

**SUPPLEMENTARY INFORMATION:** GSA published its proposed rulemaking on this subject in the *Federal Register* on April 28, 1987 (52 FR 15339). One set of comments, from the Section of Public

Contract Law, American Bar Association (ABA), was received. The following summarizes those comments and addresses them *in seriatim*.

**A. General**

1. *Comment:* The commenter found the proposed regulations too detailed and technical in view of Congress' intent that they simply encompass the safeguards afforded by the Administrative Procedure Act (APA). For example, the commenter regarded the filing of post-hearing briefs as unnecessary and wasteful. Believing that the proposed rules would make the proceedings too involved and costly, the commenter suggested that the agency adopt general guidelines and allow the parties to work out procedures for their individual cases. Alternatively, the agency was urged to create two sets of procedures, one incorporating the Federal Rules of Civil Procedure, and another, less formal set.

*Response:* The commenter is correct that Congress intended authorities already bound by the Administrative Procedure Act (APA) to conform to its requirements in conducting hearings under the Program Fraud Civil Remedies Act (PFCRA, or the Act) and for authorities not so bound to issue regulations under the Act incorporating the APA requirements. 31 U.S.C. 3803(g). However, Congress required *all* authorities covered by the statute to promulgate rules and regulations implementing the Act (31 U.S.C. 3809), and Congress intended such regulations to "be substantially uniform throughout the government." S. Rep. No. 212, 99th Cong., 1st Sess. 12 (1985). Furthermore, Congress provided that the Administrative Law Judge (ALJ) would send to each defendant a description of the procedures that would govern the proceeding. 31 U.S.C. 3803(g)(3)(B)(i).

Congress clearly intended the affected agencies to develop comprehensive procedures for the conduct of hearings under PFCRA through notice and comment rulemaking. It did not envision that each agency would develop general guidelines and leave procedures to be negotiated among the parties and the ALJ in every particular case, as suggested by the commenter. Nor is there any indication that Congress intended the agencies to develop two sets of procedures—one for experienced litigants and another for the less sophisticated.

As the APA provides only general guidelines, which cover the broad range of agency adjudications, the implementing regulations make these requirements specific to proceedings under the Act. Moreover, the Act itself

imposes a number of detailed procedural requirements that go beyond those mandated by the APA, such as provisions for prehearing discovery, the disclosure to the defendant of exculpatory information, limiting the venue of the hearing, internal review by a neutral reviewing official, and appeal of an ALJ's initial decision to the authority head. The regulations must implement these provisions, as well.

First, we disagree with the commenter's premise—that somehow a lack of specificity and detail ensures that proceedings will be more expeditious or less costly. To the contrary, an agency's failure to anticipate problems and to establish mechanisms for resolving them in regulations often delays litigation while solutions are created ad hoc. That is not only costly to litigants, but it is less fair than informing them in advance of the rules of play.

We disagree that the procedures prescribed in these regulations are too detailed or too technical. We believe that the proposed regulations and those here adopted closely track the prescriptions of the statute and the provisions of the APA, except to the extent necessary to fill in gaps left by the statute. For example, the regulations provide a mechanism for the ALJ to enter a default judgment if a defendant fails to respond to the complaint within the time allowed by the statute, an event not anticipated by the text of the Act.

Although the rules are not so technical that a layperson could not represent him or herself, we believe that an allegation that a person has violated the statute is a very serious matter and that in most instances defendants will choose to be represented by an attorney.

Finally, we think the regulations are sufficiently flexible to permit the ALJ and the parties to tailor the process to their needs and the circumstances of each case. For example, prehearing conferences are optional with the parties and may be conducted by telephone. Sections 105-70.019; 105-70.018(b)(13). The parties may agree to submit the case for decision on a stipulated record or on written statements. Section 105-70.019(c) (4) and (5). Contrary to the commenter's remark, post-hearing briefs are optional with the parties unless required by the ALJ (§ 105-70.036), and if the ALJ should find them unnecessary, he or she can dissuade the parties from submitting them.

In sum, we believe that these regulations, which will be sent to all defendants, will provide them with a clear and comprehensive roadmap of the



procedures for the conduct of the hearing.

## B. Specific

1. *Comment:* The proposed regulation expands the term "benefit" to include anything of value; whereas, Congress used the term as a subset of "money."

*Response:* The statute uses the term "benefit" or "benefits" in three different places—in the definition of "claim," in the definition of "statement," and in section 3803(c)(2)(C) where it is defined narrowly to refer to benefits to individuals under specific governmental assistance programs. Only in the definition of "claim" is the term referred to parenthetically as a subclass of "money." No such limitation applies when "benefits" is used in the definition of "statement." In that context, we believe the term as defined in the regulation suits the remedial purposes of the statute.

The authority dispenses things of value other than money, property, or services—such as licenses, permits, certificates, employment, etc. We believe that by providing a remedy against making false statements, as well as against false claims, Congress intended the Act to cover material false statements in obtaining these items of value, as well. To make our intention clear, we have amended the definition of "benefits" in § 105-70.002(d) to restrict it to application within the context of statements.

2. *Comments:* By defining "representative" as an attorney, the proposed regulation would prevent corporations and other entities from appearing *pro se* by a corporate owner or officer.

*Response:* The definition of "representative" is not intended to foreclose a corporation or other entity from appearing *pro se* by a corporate owner or officer. Individuals, of course, are also free to appear *pro se*. Section 105-70.002(n) has been clarified to this effect. However, if either individuals or entities choose to be represented by another individual, that representative must be an attorney.

3. *Comment:* The definition of "reviewing official" is deficient. It permits redelegation of authority to a designee of the General Counsel, allegedly in violation of section 3801(a)(8) of the Act requiring that the authority head designate the reviewing official. Moreover, it omits the statutory requirement that the reviewing official be serving in a position for which the rate of basic pay is not less than that for grade GS-16.

*Response:* We disagree with the commenter's reading of the statute. The

statute neither explicitly nor implicitly limits the reviewing official designated by the authority head in the regulations from redelegating that authority. Contrast section 3801(a)(8) of the Act with section 3812, which expressly prohibits the Attorney General or Assistant Attorney General designated by the Attorney General from redelegating to others the duties assigned by the statute. Especially as the statute provides for the disqualification of a particular reviewing official in a given case, the General Counsel must have the flexibility to reassign responsibility for reviewing such a case to another reviewing official. Of course, as the commenter correctly notes, whoever is designated as a reviewing official in a particular case must serve in a position for which compensation is at grade GS-16 or above. This statutory limitation was inadvertently omitted and has been reinserted in the definition.

4. *Comment:* The definition of "statement" was questioned because it appears to permit the authority to impose civil penalties and assessments under the Act on the basis of a false statement made to a State or intermediary in a program administered by any agency of the United States.

*Response:* The definition of "statement" is taken directly from section 3801(a)(9) of the Act. We believe that the commenter's concern that the authority's jurisdiction is impermissibly broad is answered when the definition of "statement" is read in conjunction with section 3801(c)(2) of the Act and § 105-70.003(b)(3), which provide that statements are considered made to the authority when they are made to an agent, fiscal intermediary, or other entity, including a State or political subdivision thereof, acting for or on behalf of the authority.

5. *Comment:* The commenter criticized § 105-70.003(b)(2) of the proposed regulation for leaving open the possibility that the agency will seek dual penalties, one based on a false statement and another based on a false certification accompanying it.

*Response:* The regulation at issue quotes verbatim section 3801(c)(1) of the Act. However, we agree with the commenter that Congress did not intend that an authority could impose penalties against both the false statement and the certification accompanying it, even though the language of the statute and the proposed regulation appear to permit it.

The statute and regulation broadly define "statement" as "any representation, certification, affirmation, document, record, or accounting or

bookkeeping entry made." Section 3801(a)(9) of the Act; § 105-70.002(p) of the regulations. The statute then clarifies that definition by stating that each written "representation, certification or affirmation" is a separate statement. Section 3801(c)(1) of the Act. Because the latter provision is relevant primarily in calculating the number of civil penalties for which a defendant may be liable, we incorporated it into § 105-70.003 of the regulations, "Basis for civil money penalties and assessments."

The ambiguity arises from the fact that to be actionable under the final version of the statute, any of the types of statements defined in section 3801(a)(9) must either contain or be accompanied by an express certification or affirmation of the truthfulness and accuracy of the statement. Section 3802(a)(2)(C) of the Act. We conclude that Congress intended that where a certification independently asserts a material fact, rather than affirming the truth of facts asserted elsewhere, such certification may be a statement for purposes of section 3802(a)(2) of the Act. On the other hand, where a statement in the form of a representation or a bookkeeping entry is "accompanied" by a certification as to the truthfulness and accuracy of the representation or entry, the certification is an integral element in making actionable the statement in the form of a representation or bookkeeping entry. Hence, only a representation or an entry may be counted as a statement subject to liability, not both the representation and the accompanying certification.

6. *Comment:* There is no statutory basis for proposed § 105-70.003(e), which would permit the authority to hold each person found liable for making a claim or statement in contravention of the statute liable for a civil penalty.

*Response:* We disagree and have retained § 105-70.003(e) as proposed. Congress stated in section 6102(b) of the Act that in addition to recompensing agencies for losses they have sustained as a result of false, fictitious, and fraudulent claims and statements, the statute would serve to deter the making of such claims and statements. That deterrent purpose is clearly better served if each person found liable under the statute may be held liable for a civil penalty without regard to contribution by others also liable for the claim or statement. As to the commenter's claim that this proposal is without precedent, we note that this section follows the precedent set in the regulations implementing the first Civil Monetary



Penalties Act enacted as part of the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 789-792 (1981), codified at 42 U.S.C. 1320a-7(c) and 1320a-7a. See 42 CFR 1003.102(c)(1) (1986). Congress used this statute as a model in devising the PFCRA. S. Rep. No. 212, 99th Cong., 1st Sess. 3-4, 8-9 (1985).

7. *Comment:* Section 105-70.004 of the proposed regulations should incorporate limitations on the investigating official's subpoena authority stated in section 3804(a) of the Act, *viz.*, that a subpoena may be issued only for materials "not otherwise reasonably available to the authority," and *only* for the purpose of conducting an investigation under the Act.

*Response:* The statutory limitations are incorporated by reference. However, we disagree with the commenter that the statute permits the investigating official to issue subpoenas *only* for the purpose of conducting an investigation under the Act. Section 3804(a) of the Act states *prefatorily*, "For the purposes of an investigation under section 3803(a)(1) of this title, an investigating official is authorized" to issue a subpoena. Compare it with section 3804(b), which begins, "For the purposes of conducting a hearing under section 3803(f) of this title," in authorizing ALJs to issue subpoenas. At the outset of an investigation into allegations of false claims or statements, an investigating official is not in a position to elect among all remedies and sanctions available to the government.

Furthermore, an agency's authority to compel the production of documents by subpoena has been given wide scope by the courts if the subpoena serves a legitimate statutory purpose; the agency's inquiry need not be focused on the forecast of a probable outcome. *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186 (1946); *United States v. Morton Salt Co.*, 338 U.S. 632 (1950); *United States v. Powell*, 379 U.S. 48, (1964).

8. *Comment:* By requiring the person producing subpoenaed documents to make the certifications required by § 105-70.004(a)(3) the proposed regulation purports to authorize the investigating official to compel testimony, which Congress considered and rejected.

*Response:* While it is true that Congress ultimately declined to grant the investigating official testimonial subpoena authority, the certifications required by § 105-70.004(a)(3) of the proposed regulations are auxiliary to the production of documents pursuant to a subpoena *duces tecum*. A custodian of records, with some exceptions, can be

compelled either in the administrative hearing or in a civil action to enforce the subpoena, to identify and authenticate the documents produced or to claim that he or she does not have possession of the records sought. See *Curcio v. United States*, 354 U.S. 118 (1957); *McPhaul v. United States*, 364 U.S. 372 (1960); *United States v. O'Henry's Film Works, Inc.*, 598 F.2d 313 (2d Cir. 1979); *United States v. Austin-Bagley Corp.* 31 F.2d 229, 234 (2d Cir. 1929). Hence, to ensure compliance with the subpoenas *duces tecum* short of resorting to an enforcement proceeding in federal court in every instance, we have required custodians to attest to their compliance. Likewise, with respect to documents protected by privilege, the regulation provides for the assertion of such privilege in advance of enforcement proceedings. We believe this will help to expedite investigations under the Act and result in fewer trips to the federal courthouse simply to ensure compliance with the terms of documentary subpoenas.

9. *Comment:* Section 105-70.004(b) is contrary to section 3803(a)(1) of the Act. The statute states that the investigating official shall report the finding and conclusions of an investigation, while the proposed regulation requires the investigating official to report such findings and conclusions to the reviewing official only if he believes an action under the PFCFA to be warranted.

*Response:* We disagree with the commenter. The language of the statute is not mandatory in the context of section 3803(a)(1), which gives the investigating official discretion to begin an investigation of allegations of liability under PFCRA. By requiring the investigating official to report the findings and conclusions of his or her investigations to the reviewing official, Congress sought to ensure that a case considered meritorious by the investigating official was subjected to "independent 'prosecutorial review'" by an official "free from any 'prosecutorial bias.'" S. Rep. No. 212, 99th Cong., 1st Sess. 12 (1985). Congress cannot reasonably have intended a highly paid investigating official to spend time writing, and a highly paid reviewing official to spend time reviewing, investigation reports on cases that do not warrant further expenditure of the agency's enforcement resources. We therefore decline to adopt the commenter's reading of the statutory provision.

10. *Comment:* Section 105-70.004(c) conflicts with the investigating official's responsibility to report his or her findings and conclusions to the

reviewing official: Only the Attorney General or a designated Assistant Attorney General can delay a proceeding under PFCRA because it may interfere with a criminal investigation.

*Response:* We likewise reject the commenter's conclusion here. Section 3803(a)(1) of the Act itself explicitly states that the investigating official's responsibility to report on PFCRA investigations "does not modify any responsibility of an investigating official to report violations of criminal law to the Attorney General." Under the Inspector General Act of 1978, the Inspector General, who is CSA's investigating official under PFCRA, is obligated to report violations of Federal criminal law expeditiously to the Attorney General. 5 U.S.C. App. 4(d). Congress intended that the Inspectors General "would be required to contact the Justice Department directly, without clearing the referrals with the agency head, the General Counsel of the agency or any other individual in that agency." S. Rep. No. 1071, 95th Cong., 2d Sess. 30 (1978).

Clearly, conduct that could subject a person to liability under the PFCRA also might subject the person to liability under a number of criminal statutes, such as 18 U.S.C. 286, 287, 1001, or 1341. Also at a particular point in an investigation, it may become clear that an agent of a corporation is personally liable under the PFCRA. However, the investigating official may believe that further investigation would show that the corporation, corporate officers, and perhaps the government contracting officer are criminally liable. Premature disclosure to the reviewing official of the agent's liability under PFCRA might jeopardize that investigation.

Sections 105-70.004 (c) and (d) of the regulations make it clear that the investigating official is not obliged to report to the reviewing official under section 3803(a)(1) just because he or she has evidence that conduct may fall within the scope of the PFCRA. As a highly placed government official, the Inspector General is expected to exercise discretion to balance the competing interests at stake in determining if and when to report findings to the reviewing official.

That the Attorney General or Assistant Attorney General has authority to cause a stay of a hearing under the Act, as provided in section 3803(b)(3), in no way implies that the investigating official *lacks* the authority to prevent interference with similar interests *before* such a hearing has been commenced.



11. *Comment:* Section 105-70.005(b)(6) does not satisfy the statutory requirement that the reviewing official determine that there is a reasonable prospect of collecting from the defendant the amount for which the person may be liable.

*Response:* We have concluded that the sufficiency of the basis for the reviewing official's statement concerning the financial condition of possible defendants is a matter best left to the authority and the Department of Justice. Hence, without agreeing with the commenter's position, we have deleted the final sentence in section 105-70.005(b)(6).

Section 3809(2) of the Act directs the authority to promulgate regulations requiring the reviewing official to include in his notice to the Attorney General a statement that there is a reasonable prospect of collecting the amount for which the person may be held liable. Congress thus sought to ensure that in each case the authority and the Department of Justice would weigh the benefits and costs of pursuing remedies under the Act or others. The reviewing official's statement is obviously intended to assist the authority and the Attorney General in determining how best to deploy their enforcement resources, not to confer a right upon potential defendants. This intent is underscored by the fact that a defendant cannot obtain the reviewing official's notice to the Attorney General section 3803(g)(3)(B)(ii). Also, Congress included the requirement that the reviewing official make such a statement in section 3809(2) rather than list it among the criteria related to the merits of a proposed action, which it specified in section 3803(a)(2) of the Act.

Congress recognized that obtaining financial information is a difficult and uncertain process. The Fair Credit Reporting Act, 15 U.S.C. 1681b, the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401-3422, and the Tax Reform Act of 1976, 26 U.S.C. 6103, for example, limit or prohibit easy access to the kinds of records which typically would illuminate the financial circumstances of a potential defendant. Consequently, judgments about collectability are particularly difficult to make, especially before formal proceedings have been commenced.

Under the circumstances, we believe that § 105-70.005(b)(6) as currently worded satisfies the statutory requirement and leaves the authority and the Department of Justice to determine what will constitute sufficient support for the reviewing official's statement.

12. *Comment:* The commenter suggests that the regulation appears to circumvent the \$150,000 jurisdictional ceiling on agency adjudications under PFCRA by defining "related" claims under section 3803(c)(1) of the Act too narrowly.

*Response:* Congress provided in section 3803(c)(1) of the Act that no allegations of liability could be referred to an ALJ if the reviewing official determines that an amount of money, or property or services with a value of more than \$150,000 was requested or demanded in a claim or "in a group of related claims which are submitted at the time such claim is submitted." By imposing the cap, Congress sought to ensure that a group of related false claims submitted together that could result in hundreds of thousands or millions of dollars in penalties should be prosecuted jointly in court, not separately in an administrative proceeding. S. Rep. No. 212, 99th Cong., 1st Sess. 24-25 (1985).

Claims must satisfy two statutory requirements if they are to be aggregated for purposes of computing the jurisdictional amount: They must be "related," and they must be "submitted at the same time." The commenter's suggestion that the term "related" means that the claims in question were filed at the same time would reduce the term "related" to surplusage. We reject a construction so clearly at odds with the principles of statutory construction. Claims submitted at the same time must also be "related." That is, the mere fact that a contractor chooses to "batch" claims under several contracts together for submission to the agency does not make them "related."

Congress gave little clue as to what it meant by "related," but it did remark that claims for progress payments under the same contract would be related. S. Rep. No. 212, 99th Cong., 1st Sess. 25 (1985). Section 105-70.006(b) of the regulation thus defines "a related group of claims submitted at the same time" as "claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission." This definition is both reasonable and fully consistent with the language of the statute and the intent of Congress.

13. *Comment:* The commenter took exception to the incorporation of Fed. R. Civ. P. 4(d) into section 105-70.008 of the proposed regulation, noting that section 3803(d)(1) specifies that service of a complaint must be by registered or certified mail or by delivery.

*Response:* The regulation implements the statute by providing that if the complaint is delivered, delivery of the complaint may be made as permitted under Rule 4(d) of the Federal Rules of Civil Procedure.

14. *Comment:* Section 105-70.009 of the proposed regulation is inconsistent with the statute, in that the former requires a defendant to request a hearing within 30 days of service, whereas the statute measures the 30 days from receipt.

*Response:* We have modified § 105-70.008(b) to clarify that service under § 105-70.008 is complete upon receipt, either through the mail, as evidenced by an acknowledged return receipt card or by delivery as attested to by the person who made delivery or who received the complaint. Section 105-70.009(a), by allowing the defendant 30 days from service to request a hearing, is fully consonant with section 3803(d)(2) of the Act.

15. *Comment:* The commenter does not believe that the statute permits the agency to require an answer and recommends the deletion of § 105-70.009.

*Response:* We disagree. The statute provides that a person receiving a notice of allegations of liability (section 3803(d)(1) of the Act) may get a hearing before an ALJ if such person requests a hearing within 30 days of receipt. Congress conceived of the notice of allegations of liability as a "complaint" (S. Rep. No. 212, 99th Cong., 1st Sess. 14 (1985)), and we have adopted that concept in these regulations (see §§ 105-70.007 and 105-70.008). Consistent with that approach, we have denominated a defendant's request for a hearing as an "answer" and have specified that the defendant shall admit or deny the allegations in the complaint and shall state any defenses on which he shall rely. This will expedite the proceeding by focusing the issues for the parties and the ALJ, as well as giving the ALJ important information about the complexity of the case for purposes of scheduling a hearing, as he is required to do by statute and § 105-70.012 upon receiving the answer. To the objection that the defendant has only 30 days to respond, it should be noted that persons are required to answer a summons and complaint within 20 days under Fed. R. Civ. P. 12(a). However, we have amended the regulation to provide that a defendant may file within 30 days of receipt of the complaint a request for hearing and a request for an additional 30 days to file a complete answer in accordance with § 105-70.009. Cf. 42 CFR 1003.109(b)(1986).



16. *Comment:* It is recommended that we delete § 105-70.010 of the proposed regulations allowing for the entry of an order of default upon failure to answer because the statute does not expressly provide for it.

*Response:* Although the statute does not expressly provide for default upon a defendant's failure to request a hearing, this type of regulation is necessary to implement the Act. See section 3809 of the Act. Were there no such provision, a defendant's failure or refusal to answer the complaint alone would defeat the process Congress has envisioned for the administrative adjudication of false claims and statements.

17. *Comment:* The commenter challenged proposed § 105-70.018(c) as an unauthorized limitation on an ALJ's inherent powers.

*Response:* Section 105-70.018(c) has been revised slightly to state that "the ALJ does not have the authority to find Federal statutes or regulations invalid." This proposition follows from the fact that administrative agencies themselves have no jurisdiction to pass upon the constitutionality of legislative or administrative action. See, e.g., *Motor and Equipment Manufacturers Ass'n, Inc. v. EPA*, 627 F.2d 1095, 1114-15 (D.C. Cir.), cert. denied, 446 U.S. 952 (1979); *Spiegel v. FTC*, 540 F.2d 287, 294 (7th Cir. 1976); *Finnerty v. Cowen*, 508 F.2d 979, 982 (2d Cir. 1974). See also *Buckeye Industries Inc. v. Secretary of Labor*, 587 F.2d 231, reh'g denied, 591 F.2d 1343 (5th Cir. 1979) ("No administrative tribunal of the United States has the authority to declare unconstitutional the Act it is called upon to administer.") Cf. *Public Utilities Commission v. United States*, 355 U.S. 534, 539-40 (1958). The ALJ making an initial decision on behalf of the authority head obviously has no greater authority than the authority head to declare Federal statutes and regulations invalid, and the regulation simply articulates that principle.

Moreover, "[o]n matters of law and policy," the ALJ is "entirely subject to the agency." *Association of Administrative Law Judges v. Heckler*, 594 F. Supp. 1132, 1141 (D.D.C. 1984). See also Scalia, *The ALJ Fiasco—A Reprise*, 47 U. Chi. L. Rev. 57, 62 (1980). As the agency is given rulemaking authority under 5 U.S.C. 553 and many substantive statutes, the ALJ is powerless to usurp that authority by declaring duly promulgated regulations invalid. The ALJ's role is interpretation not legislation.

18. *Comment:* The agency is obligated to disclose to the defendant any exculpatory evidence contained in the reviewing official's notice to the

Attorney General, contrary to proposed § 105-70.020(c).

*Response:* Section 3803(g)(3)(B)(ii) of the Act directly prohibits the disclosure of the reviewing official's notice to the Attorney General, and § 105-70.020(c) implements that provision. However, the reviewing official is to include exculpatory circumstances in his or her notice to the Attorney General (§ 105-70.005(b)(5)), and the agency is obligated to disclose exculpatory information in the possession of the investigating or reviewing official. Hence, the information that goes into the notice may be disclosed to the defendant although the notice itself is not disclosed.

19. *Comment:* Section 105-70.031 of the proposed regulations would create a presumption that the maximum amount of penalties and assessments should be imposed. The commenter noted that the statute vested broad discretion in the ALJ to determine the appropriate amount of penalties and assessments and recommended that the last sentence of proposed § 105-70.031 be deleted as inappropriate.

*Response:* The commenter is correct in noting that the ALJ and the authority head on appeal have broad discretion under the statute in fixing the amount of penalties and assessments. Without agreeing that the last sentence of § 105-70.031 is inappropriate, we have deleted it.

20. *Comment:* Section 105-70.032 of the proposed regulation fails to create a presumption that the hearing would be held where the defendant resides.

*Response:* The proposed regulation tracks the statute. Section 3803(g)(4) of the Act specifies three alternative sites for the hearing: (1) where the defendant resides or transacts business; (2) where the claim or statement was made; or (3) in some place agreed upon by the defendant and the ALJ. It does not create a presumptive venue, nor should it. That determination is best left to the ALJ and the parties framing the case.

21. *Comment:* Considering the gravity of the allegations of false claims or statements and the amount of penalties and assessments at stake, evidence generally should be limited to what is admissible in court. In particular § 105-70.034 should be revised to exclude hearsay evidence or at least to create a presumption against the admission of hearsay.

*Response:* We decline to accept the commenter's suggestions. First, it is well-established that technical rules of evidence—such as the Federal Rules of Evidence—do not apply in an administrative proceeding absent a regulation expressly making them

applicable. See 5 U.S.C. 556(d); *Richardson v. Perales*, 402 U.S. 389 (1971). That Congress chose to provide for the adjudication of allegations of false claims and statements against the government in an administrative forum under the APA strongly suggests that Congress also intended the less restrictive evidentiary standards of the APA to apply. The very advantages of expediency and lower cost that Congress sought by providing this administrative remedy would be lost if the Federal Rules of Evidence and the Federal Rules of Civil Procedure were imported into it from the judicial context. Moreover, the reasons for the more rigorous exclusionary rules of the Federal Rules of Evidence, such as those against hearsay, do not obtain where no jury can be misled. See, e.g., 3 K.C. Davis, *Administrative Law Treatise*, § 16.4 (2 ed. 1980); Davis, *An Approach to Rules of Evidence for Nonjury Cases*, 50 A.B.A.J. 723 (1964); Davis, *Hearsay in Administrative Proceedings*, 32 Geo. Wash. L. Rev. 689 (1964); Gellhorn, *Rules of Evidence and Official Notice in Formal Administrative Hearings*, 1971 Duke L.J. 1.

Instead, the provisions of § 105-70.034 (a) through (d) are based on Recommendation 86-2 of the Administrative Conference of the United States, 1 CFR 305.86-2, published at 51 FR 25642 (July 16, 1986). They provide that an ALJ shall exclude evidence that is irrelevant and immaterial and may exclude relevant evidence that is unreliable or if its probative value is substantially outweighed by other factors, such as unfair prejudice or the undue consumption of time.

With respect to a defendant's right to confront adverse witnesses, § 105-70.033(b) provides that an ALJ may permit testimony to be admitted in the form of a written statement or deposition. If the ALJ chooses to allow such testimony, the party seeking to introduce it must provide it to all other parties with the declarant's last known address in a manner which affords other parties sufficient time to subpoena the witness for cross-examination at the hearing. This satisfies due process. *Richardson v. Perales*, supra.

22. *Comment:* The commenter objects that § 105-70.038 of the proposed regulations conflicts with section 3803(i)(1) of the Act, which provides that the decision of the ALJ is final unless it is appealed by the defendant.

*Response:* We do not believe that § 105-70.038 conflicts with the statute. By providing for reconsideration of the initial decision, the regulation allows for the expeditious resolution of errors of



law and fact by the trier of fact, who can most expeditiously resolve these matters, perhaps without resort to an appeal to the authority head.

An ALJ's decision becomes the final decision of the authority unless it is appealed within 30 days by a person determined to be liable for penalties and assessments. This is a departure from adjudications under the APA. Under 5 U.S.C. 557(b), an ALJ makes an initial or recommended decision, while the agency retains full authority to make a *de novo* determination as to issues of law and fact on the record either on appeal or by review on its own motion. The agency thus can ensure consistency in its decisions and adherence to agency policy—including uniform interpretations of the statutes it administers and its own regulations. Moreover, where novel issues of law arise in the context of adjudications, the agency may articulate its policy in the first instance, subject, of course, to judicial review.

It is difficult to conceive that Congress intended to eliminate the authority's prerogative of speaking the final word on statutes and regulations within its purview. Without a process of reconsideration, the agency would be powerless even to seek, let alone make, corrections of misstatements of law and fact in ALJ decisions unless a defendant were found liable and chose to appeal. We do not believe Congress intended to sacrifice uniformity and consistency in decisions under this Act and other substantive statutes that will be subject to interpretation in adjudications thereunder. Hence, we have provided an opportunity for both parties to seek reconsideration of the ALJ's initial decision as necessary for the effective implementation of this statute.

23. *Comment:* It was argued that § 105-70.039 of the proposed regulation eliminated for 25 days a defendant's right to appeal to the authority head, as provided in section 3803(i)(2)(A) of the Act. The commenter also took exception to the requirement that the defendant must file a legal brief on appeal specifying exceptions, stating that a brief letter ought to suffice in some cases.

*Response:* With regard to the first comment, we have amended § 105-70.039(b) to provide that a defendant may file a notice of appeal at any time within 30 days after the ALJ issues a decision, but that if another party files a request for reconsideration in accordance with § 105-70.038, action on the appeal will be stayed automatically pending disposition of the motion for reconsideration. With regard to the second concern, insofar as Congress

provided that an ALJ's decision would stand as the authority's own, absent an appeal by the defendant, Congress clearly did not intend for the authority to rout through the decision in search of error or to redetermine all issues *de novo* without any guidance from the aggrieved party. The agency's authority to limit its consideration on appeal to specific exceptions pointing out error is both well-established and of obvious practical value. See *Marshall Field & Co. v. National Labor Relations Board*, 318 U.S. 253, 255 (1943); *National Labor Relations Board v. Cheney California Lumber Co.*, 327 U.S. 385, 387-88 (1946). The Attorney General's Committee on Administrative Procedure long ago urged the agencies to insist upon "meaningful content and exactness in [an] appeal from the [ALJ's] decision \* \* \* and to cease from shouldering 'the burden of complete reexamination. Review of the [ALJ's] decision should in general and in the absence of clear error be limited to grounds specified in the appeal.'" *Administrative Procedure in Government Agencies*, S. Doc. No. 8, 77th Cong., 1st Sess. 52 (1941) (Final Report of the Attorney General's Committee on Administrative Procedure). We agree.

24. *Comment:* Section 105-70.043 should be revised to reflect the fact that investigating and reviewing officials may not make collections under section 3806 of the Act, as provided in section 3809(l) of the Act.

*Response:* This limitation is already contained in § 105-70.014, pertaining to separation of functions.

25. *Comment:* Section 105-70.044 should be revised to indicate that only a final decision imposing penalties or assessments may constitute the basis for an administrative offset under section 3807 of the Act.

*Response:* Section 105-70.044 of the regulation reiterates the statutory language. A final decision is defined in §§ 105-70.010 (d) and (l), 37(d), 38(g), and 39(l).

#### Executive Order 12291

The General Services Administration has determined that this rule is not a major rule for the purposes of E.O. 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and the consequence of, this rule; has determined that the potential benefits to

society from this rule outweigh the potential costs and has maximized the new benefits; and has chosen the alternative approach involving the least net cost to society.

#### Paperwork Reduction Act of 1980

These regulations contain no information collection or record keeping requirements as defined by the Paperwork Reduction Act of 1980, and fall within the exceptions to coverage.

#### List of Subjects in 41 CFR Part 105-70

Claims, Program fraud, Administrative hearing.

For the reasons set forth in the preamble, 41 CFR Part 105-70 is added to read as follows:

#### PART 105-70—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

Sec.	
105-70.000	Scope.
105-70.001	Basis.
105-70.002	Definitions.
105-70.003	Basis for civil penalties and assessments.
105-70.004	Investigation.
105-70.005	Review by reviewing official.
105-70.006	Prerequisites for issuing a complaint.
105-70.007	Complaint.
105-70.008	Service of complaint.
105-70.009	Answer.
105-70.010	Default upon failure to file an answer.
105-70.011	Referral of complaint and answer to the ALJ.
105-70.012	Notice of hearing.
105-70.013	Parties to the hearing.
105-70.014	Separation of functions.
105-70.015	Ex parte contacts.
105-70.016	Disqualification of reviewing official or ALJ.
105-70.017	Rights of parties.
105-70.018	Authority of the ALJ.
105-70.019	Prehearing conferences.
105-70.020	Disclosure of documents.
105-70.021	Discovery.
105-70.022	Exchange of witness lists, statements, and exhibits.
105-70.023	Subpoenas for attendance at hearing.
105-70.024	Protective order.
105-70.025	Fees.
105-70.026	Form, filing and service of papers.
105-70.027	Computation of time.
105-70.028	Motions.
105-70.029	Sanctions.
105-70.030	The hearing and burden of proof.
105-70.031	Determining the amount of penalties and assessments.
105-70.032	Location of hearing.
105-70.033	Witnesses.
105-70.034	Evidence.
105-70.035	The record.
105-70.036	Post-hearing briefs.
105-70.037	Initial decision.
105-70.038	Reconsideration of initial decision.



- Sec.  
 105-70.039 Appeal to Authority Head.  
 105-70.040 Stays ordered by the Department of Justice.  
 105-70.041 Stay pending appeal.  
 105-70.042 Judicial review.  
 105-70.043 Collection of civil penalties and assessments.  
 105-70.044 Right to administrative offset.  
 105-70.045 Deposit in Treasury of United States.  
 105-70.046 Compromise or settlement.  
 105-70.047 Limitations.  
 Authority: 40 U.S.C. 486(c); 31 U.S.C. 3809.

#### § 105-70.000 Scope.

This part (a) establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and (b) specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

#### § 105-70.001 Basis.

This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. No. 99-509, 6101-6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801-3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

#### § 105-70.002 Definitions.

The following shall have the meanings ascribed to them below unless the context clearly indicates otherwise:

- (a) "ALJ" means an Administrative Law Judge in the Authority appointed pursuant to 5 U.S.C. 3105 or detailed to the Authority pursuant to 5 U.S.C. 3344.
- (b) "Authority" means the General Services Administration.
- (c) "Authority Head" means the Administrator or Deputy Administrator of General Services.
- (d) "Benefit" means, in the context of statements, anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.
- (e) "Claim" means any request, demand or submission—
  - (1) Made to the Authority for property, services, or money (including money representing grants, loans, insurance, or benefits);
  - (2) Made to a recipient of property, services, or money from the Authority or to a party to a contract with the Authority—
    - (i) For property or services if the United States—

(A) Provided such property or services;

(B) Provided any portion of the funds for the purchase of such property or services; or

(C) Will reimburse such recipient or party for the purchase of such property or services; or

(ii) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(A) Provided any portion of the money requested or demanded, or

(B) Will reimburse such recipient or party for any portion of the money paid on such request of demand; or

(3) Made to the Authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

(f) "Complaint" means the administrative complaint served by the reviewing official on the defendant under § 105-70.007.

(g) "Defendant" means any person alleged in a complaint under § 105-70.007 to be liable for a civil penalty or assessment under § 105-70.003.

(h) "Individual" means a natural person.

(i) "Initial Decision" means the written decision of the ALJ required by § 105-70.010 or § 105-70.037, and includes a revised initial decision issued following a remand or a motion for reconsideration.

(j) "Investigating Official" means the Inspector General of the General Services Administration or an officer or employee of the Office of the Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

(k) "Knows or has reason to know" means that a person, with respect to a claim or statement—

(1) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(2) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(3) Acts in reckless disregard of the truth or falsity of the claim or statement.

(l) "Makes," wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, "making" or "made", shall likewise include the corresponding forms of such terms.

(m) "Person" means any individual, partnership, corporation, association, or private organization.

(n) "Representative" means an attorney who is a member in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico. (An individual may appear *pro se*; a corporate officer or an owner may represent a business entity.)

(o) "Reviewing Official" means the General Counsel of the General Services Administration or his designee who is—

(1) Not subject to supervision by, or required to report to, the investigating official; and

(2) Not employed in the organizational unit of the authority in which the investigating official is employed; and

(3) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

(p) "Statement" means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(1) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(2) With respect to (including relating to eligibility for)—

(i) A contract with, or a bid or proposal for a contract with; or

(ii) A grant, loan, or benefit from, the Authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

#### § 105-70.003 Basis for civil penalties and assessments.

(a) Claims. (1) Any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed.



shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the Authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) Statements. (1) Any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the Authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Authority.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a claim or statement

under this section, each such person may be held liable for a civil penalty under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

#### § 105-70.004 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available and the reasons therefor, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege, or any combination of the foregoing.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

#### § 105-70.005 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 105-70.004(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 105-70.003 of this part, the

reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 105-70.007.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services or other benefits requested or demanded in violation of § 105-70.003 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

#### § 105-70.006 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 105-70.007 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 105-70.003(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 105-70.003(a) does not exceed \$150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested.

#### § 105-70.007 Complaint.

(a) On or after the date the Department of Justice approves the



issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 105-70.008.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 105-70.010.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

#### § 105-70.008 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure. *Service is complete upon receipt.*

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his representative.

#### § 105-70.009 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person

authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official shall file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time as provided in § 105-70.011. For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

#### § 105-70.010 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 105-70.009(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on the defendant in the manner prescribed in § 105-70.008, a notice that an initial decision will be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true, and, if such facts establish liability under § 105-70.003, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 105-70.038.

(h) The defendant may appeal to the Authority Head the decision denying a motion to reopen by filing a notice of appeal with the Authority Head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the Authority Head decides the issue.

(i) If the defendant files a timely notice of appeal with the Authority Head, the ALJ shall forward the record of the proceeding to the Authority Head.

(j) The Authority Head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the Authority Head decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the Authority Head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the Authority Head decides that the defendant's failure to file a timely answer is not excused, the Authority Head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the Authority Head issues such decision.

#### § 105-70.011 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

#### § 105-70.012 Notice of Hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 105-70.008. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.



**§ 105-70.013 Parties to the hearing.**

(a) The parties to the hearing shall be the defendant and the Authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

**§ 105-70.014 Separation of functions.**

(a) The investigating official, the reviewing official, and any employee or agent of the Authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the Authority Head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the Authority, including in the offices of either the investigating official or the reviewing official.

**§ 105-70.015 Ex parte contacts.**

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

**§ 105-70.016 Disqualification of reviewing official or ALJ.**

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery

of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed not further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

**§ 105-70.017 Rights of parties.**

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral argument at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

**§ 105-70.018 Authority of the ALJ.**

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibility of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

**§ 105-70.019 Prehearing conferences.**

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

**§ 105-70.020 Disclosure of documents.**

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the



allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 105-70.004(b) are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 105-70.005 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 105-70.009.

#### § 105-70.021 Discovery.

(a) The following types of discovery are authorized:

- (1) Requests for production of documents for inspection and copying;
- (2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;
- (3) Written interrogatories; and
- (4) Depositions.

(b) For the purpose of this section and §§ 105-70.022 and 105-70.023, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) Motions for discovery.

(1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 105-70.024.

(3) The ALJ may grant a motion for discovery only if he finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery;

(5) The ALJ may grant discovery subject to a protective order under § 105-70.024.

(e) Depositions.

(1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 105-70.008.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

#### § 105-70.022 Exchange of witness lists, statements and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 105-70.033(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance

with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

#### § 105-70.023 Subpoena for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 105-70.008. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

#### § 105-70.024 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;



(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

#### § 105-70.025 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the Authority, a check for witness fees and mileage need not accompany the subpoena.

#### § 105-70.026 Form, filing and service of papers.

(a) Form. (1) Documents filed with the ALJ shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (e.g., motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) Service. A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 105-70.008 shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid and addressed to the

party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) Proof of Service. A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

#### § 105-70.027 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional five days will be added to the time permitted for any response.

#### § 105-70.028 Motions

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

#### § 105-70.029 Sanctions.

(a) The ALJ may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

#### § 105-70.030 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 105-70.003 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

#### § 105-70.031 Determining the amount of penalties and assessments.

In determining an appropriate amount of civil penalties and assessments, the ALJ and the Authority Head, upon appeal, should evaluate any circumstances presented that mitigate or aggravate the violation and should



articulate in their opinions the reasons that support the penalties and assessments they impose.

#### § 105-70.032 Location of hearing.

- (a) The hearing may be held—
- (1) In any judicial district of the United States in which the defendant resides or transacts business;
  - (2) In any judicial district of the United States in which the claim or statement in issue was made; or
  - (3) In such other place as may be agreed upon by the defendant and the ALJ.
- (b) Each party shall have the opportunity to present arguments with respect to the location of the hearing.
- (c) The hearing shall be held at the place and at the time ordered by the ALJ.

#### § 105-70.033 Witnesses.

- (a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.
- (b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 105-70.022(a).
- (c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to—
- (1) Make the interrogation and presentation effective for the ascertainment of the truth,
  - (2) Avoid needless consumption of time, and
  - (3) Protect witnesses from harassment or undue embarrassment.
- (d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.
- (e) To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.
- (f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other

witnesses. This rule does not authorize exclusion of—

- (1) A party who is an individual;
- (2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity *pro se* or designated by the party's representative; or
- (3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

#### § 105-70.034 Evidence.

- (a) The ALJ shall determine the admissibility of evidence.
- (b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, e.g., to exclude unreliable evidence.
- (c) The ALJ shall exclude irrelevant and immaterial evidence.
- (d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.
- (e) Although relevant, evidence may be excluded if it is privileged under Federal law.
- (f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.
- (g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.
- (h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 105-70.024.

#### § 105-70.035 The record.

- (a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.
- (b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the Authority Head.
- (c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 105-70.024.

#### § 105-70.036 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

#### § 105-70.037 Initial decision.

- (a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.
- (b) The findings of fact shall include a finding on each of the following issues:
- (1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 105-70.003.
  - (2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case.
- (c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the Authority Head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.
- (d) Unless the initial decision of the ALJ is timely appealed to the Authority Head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the Authority Head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

#### § 105-70.038 Reconsideration of initial decision.

- (a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.
- (b) Every such motion must set forth the matters claimed to have been



erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the Authority Head and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the Authority Head in accordance with § 105-70.039.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the Authority Head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the Authority Head in accordance with § 105-70.039.

#### § 105-70.039 Appeal to Authority Head

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the Authority Head by filing a notice of appeal with the Authority Head in accordance with this section.

(b) (1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under § 105-70.038, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) The Authority Head may extend the initial 30 day period for an additional 30 days if the defendant files with the Authority Head a request for an extension within the initial 30 day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the Authority Head and the time for filing motions for reconsideration under § 105-70.038 has expired, the ALJ shall forward the record of the proceeding to the Authority Head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Authority may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the Authority Head.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the Authority Head shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the Authority Head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the Authority Head shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The Authority Head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the ALJ in any initial decision.

(k) The Authority Head shall promptly serve each party to the appeal with a copy of the decision of the Authority Head and a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the Authority Head serves the defendant with a copy of the Authority Head's decision, a determination that a defendant is liable under § 105-70.003 is final and is not subject to judicial review.

#### § 105-70.040 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the Authority Head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the Authority Head shall stay the process immediately. The Authority Head may order the process resumed only upon receipt of the written authorization of the Attorney General.

#### § 105-70.041 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the Authority Head.

(b) No administrative stay is available following a final decision of the Authority Head.

#### § 105-70.042 Judicial review.

Section 3805 of Title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the Authority Head imposing penalties or assessments under this part and specifies the procedures for such review.

#### § 105-70.043 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of Title 31, United States Code, authorize action for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

#### § 105-70.044 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under §§ 105-70.042 or 105-70.043, or any amount agreed upon in a compromise or settlement under § 105-70.046, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

#### § 105-70.045 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

#### § 105-70.046 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The Authority Head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 105-70.042 or during the pendency of any action to collect



penalties and assessments under § 105-70.043.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 105-70.042 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the Authority Head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the Authority Head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

#### § 105-70.047 Limitations.

(a) The Program Fraud Civil Remedies Act of 1986 provides that a hearing shall be commenced within 6 years after the date on which a claim or statement is made. 31 U.S.C. 3808(a). The statute also provides that the hearing is commenced by the mailing or delivery of the presiding officer's (ALJ's) notice. 31 U.S.C. 3803(d)(2)(B). Accordingly, the notice of hearing provided for in § 105-70.012 herein shall be served within 6 years after the date on which a claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 105-70.010(b) shall be deemed a notice of hearing for purposes of this section.

Dated: October 26, 1987.

T.C. Golden,

Administrator of General Services.

[FR Doc. 87-27073 Filed 11-24-87; 8:45 am]

BILLING CODE 6820-38-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 655

[Docket No. 70102-7002]

#### Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of squid specifications decrease.

SUMMARY: NOAA issues this notice to decrease the Initial Optimum Yields (IOY) specifications for *Loligo* and *Illex* squids as required by regulations governing the squid fisheries. The revised IOYs for *Loligo* and *Illex* squids, respectively, are 10,129 metric tons (mt) and 9,738 mt. This action is intended to foster the goal of the Fishery

Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) by creating benefits for the United States fishing industry.

EFFECTIVE DATE: This decrease is effective November 20, 1987.

#### FOR FURTHER INFORMATION CONTACT:

Kathi Rodriques (Northeast Region, NMFS), 617-281-3600, ext. 324.

SUPPLEMENTARY INFORMATION: Under § 655.22, final initial annual specifications were published in the Federal Register (52 FR 537, January 7, 1987) for the 1987 fishing year, January through December 1987. The final IOYs for *Loligo* and *Illex* were, respectively, 23,629 mt and 15,038 mt. The IOY for *Illex* was adjusted upward to 15,538 mt by adding 500 mt to the joint venture processing (JVP) amount (52 FR 30166, August 13, 1987). These amounts were to provide the greatest overall benefit to the Nation, in line with the objectives of the FMP, after considering all relevant economic, ecological, and social factors as required by the Magnuson Act.

The absence of a foreign directed fishery in the spring for *Loligo* squid, the increased domestic harvesting capacity represented by the new freezer trawlers, and the market demand for this species of squid all lent support to the expectation that the 1987 fishing year would produce record results. The outset of the year signaled a banner year as the catches of *Loligo* in January, February, and March greatly exceeded the levels of catch for that period in any year for which records were maintained. The catches inexplicably have fallen off dramatically, but the market demand is still high and orders remain unfilled. Many feel that the decline in catches is directly attributable to the unavailability of the resource in harvestable concentrations.

To date, the domestic harvest of *Loligo* has reached 8,590 mt, far short of the projected 23,500 mt domestic annual harvest (DAH). There remains a reasonable expectation that the domestic harvest will continue and possibly increase in the last month of the fishing year as our vessels continue to fish offshore. Again, the success of the fishery depends on the availability of the resource.

The fishery for *Illex* squid has been prosecuted reasonably well by the domestic fleet. Its harvest to date is 9,650 mt. The season began well and improved for a time. In the summer and autumn, domestic processors' freezers were full of processed *Illex* which had few markets. Recently this product has started to move. The *Illex* fishery is over for this fishing year, but with the

development of additional markets can continue to improve.

The joint venture aspect of the squid fishery followed the pattern of availability of the species, as constrained by the JVP specification. Joint ventures resulted in the harvest of 990 mt of *Loligo* and 3,150 mt of *Illex*. All of the joint ventures have ceased operations for this fishing year.

The question of the total allowable level of foreign fishing (TALFF) for both species of squids has been debated long and intensely throughout the fishing year, in meetings of both the Mid-Atlantic and New England Fishery Management Councils. The overwhelming testimony, even from several domestic joint venture partners, was against increasing TALFF for either species of squid.

Six freezer trawlers currently have increased their operations for squid. Large investments have been made to bring additional freezer trawlers into the squid fishery. The product landed by these vessels is of high quality and is largely for the export market.

To increase TALFF at this point would be inconsistent with the developmental goals of the FMP and the Magnuson Act. Additional *Loligo* TALFF could lessen demand for squid produced by domestic harvesters. Any additional *Illex* TALFF could drastically slow the recent movement of processed product from domestic processors' freezers.

The regulations at § 644.21(b)(1)(v) provide that the specifications may be adjusted by the Regional Director, Northeast Region, NMFS, after consultation with the Mid-Atlantic Council. After considering the Council's recommendation, the record of debate pertaining to the specifications throughout the year, and other relevant information, the Regional Director has determined that maximum net benefits will accrue to the United States if the IOYs for both species of squid are reduced to bring the IOY amounts more in line with what has been harvested to date and what might reasonably be expected to be harvested during the remainder of the fishing year.

In accordance with § 655.22(f), notice is hereby given that the 1987 IOY for *Loligo* squid is reduced from 23,629 mt to 10,129 mt and the IOY for *Illex* squid is reduced from 15,038 mt to 9,738 mt. The resulting components for each IOY are as follows:

#### *Loligo*:

DAH=10,000 mt, DAP=9,010 mt  
JVP=900 mt, TALFF=129 mt



*Illex:*

DAH=9,700 mt, DAP=6,550 mt  
JVP=3,150, TALFF=38 mt.

**Other Matters**

This action is taken under 50 CFR Part 655 and complies with Executive Order 12291.

In view of the short time remaining in the fishing year, NOAA has determined for good cause that it is impractical, unnecessary and contrary to the public interest to provide for prior comment or to delay the effective date of this notice under section 553 of the Administrative Procedure Act.

**List of Subjects in 50 CFR Part 655**

Fisheries, Reporting and  
recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 20, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

[FR Doc. 87-27121 Filed 11-20-87; 12:11 pm]

BILLING CODE 3510-22-M



# Proposed Rules

Federal Register

Vol. 52, No. 227

Wednesday, November 25, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 428

[Amdt. No. 1, Doc. No. 47675]

#### Sunflower Crop Insurance Regulations

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Sunflower Crop Insurance Regulations (7 CFR Part 428), effective for the 1988 crop year. The intended effect of this proposed rule is to maintain the effectiveness of the present Sunflower Crop Insurance Regulations only through the 1987 crop year. It is proposed in a separate document that the provisions currently contained in this Part will be issued as an endorsement to the newly issued 7 CFR Part 401, General Crop Insurance Regulations as § 401.124, Sunflower Endorsement, effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops which substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

**DATE:** Written comments, data, and opinions on this proposed rule must be submitted not later than December 28, 1987, to be sure of consideration.

**ADDRESS:** Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250. Written comments will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S.

Department of Agriculture, Washington, DC during regular business hours, Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1990.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

#### Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and

policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV will be terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 428 will be effective only through the end of the 1987 crop year, FCIC herein proposes to amend the subpart heading of these regulations to specify that such will be the case.

It is proposed that the new Sunflower Endorsement will be published as an endorsement to 7 CFR Part 401 (401.124, Sunflower Endorsement), and become effective for the 1988 and succeeding crop years. Upon final publication, the provisions of the Sunflower Crop Insurance Regulations, now contained in 7 CFR Part 428, would be superseded. Therefore, FCIC proposes to amend the subpart heading to provide that 7 CFR Part 428 be effective for the 1986 and 1987 crop years only.

#### List of Subjects in 7 CFR Part 428

Crop insurance, Sunflower.

#### Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Subpart heading to the Sunflower Crop Insurance Regulations (7 CFR Part 428), as follows:

#### PART 428—[AMENDED]

1. The authority citation for 7 CFR Part 428 continues to read as follows:

**Authority:** Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).



2. The Subpart heading in 7 CFR Part 428 is revised to read as follows:

**Subpart—Regulations for the 1986 and 1987 Crop Years**

Done in Washington, DC on November 13, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-27055 Filed 11-24-87; 8:45 am]

BILLING CODE 3410-08-M

**Animal and Plant Health Inspection Service**

**9 CFR Part 51**

[Docket No. 87-152]

**Animals Destroyed Because of Brucellosis**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of reopening and extension of comment period.

**SUMMARY:** We are reopening and extending the comment period for our proposal to increase the amount of federal indemnity for brucellosis exposed bison and certain brucellosis exposed cattle destroyed during herd depopulation. This extension will provide interested persons with additional time in which to prepare comments on the proposal.

**DATES:** Consideration will be given only to written comments on Docket No. 85-122 that are postmarked or received on or before December 28, 1987.

**ADDRESSES:** Send an original and two copies of your comments to Steven B. Farberman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 85-122. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m.,

Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:**

Dr. H. E. Metcalf, Senior Staff Veterinarian, Program Planning Staff, VS, APHIS, USDA, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436-8713.

**SUPPLEMENTARY INFORMATION:** On September 28, 1987, we published in the Federal Register (52 FR 36272-36274, Docket No. 85-122) a proposal to increase the amount of federal indemnity for brucellosis exposed bison and certain brucellosis exposed cattle destroyed during herd depopulation. Comments on this proposal were required to be postmarked or received on or before October 28, 1987.

Shortly before the comment period closed, we received a request to extend the comment period on the proposal for 30 days. In response, we are reopening and extending the comment period on Docket No. 85-122 so that we may consider all written comments postmarked or received on or before December 28, 1987. This action will allow the requestor and all other interested persons additional time to prepare comments.

Done in Washington, DC, this 19th day of November, 1987.

Donald Houston,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 87-27196 Filed 11-24-87; 8:45 am]

BILLING CODE 3410-34-M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

[Summary Notice No. PR-87-9]

**14 CFR Ch. I**

**Petitions of Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and be received on or before, January 25, 1988.

**ADDRESSES:** Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. \_\_\_\_\_, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 or Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on November 17, 1987.

Deborah E. King,

Acting Manager, Program Management Staff.

**PETITIONS FOR RULEMAKING**

Docket No.	Petitioner	Description of the petition
25266	Beech Aircraft Corporation .....	Regulation affected § 91.33(d). To provide for the option of installing a third attitude instrument in lieu of the required gyroscopic rate-of-turn indicator.
25268	Beech Aircraft Corporation .....	Regulation affected is § 135.159(a). To provide for the option in a third attitude instrument in lieu of the required gyroscopic rate-of-turn indicator.



## PETITIONS FOR RULEMAKING—Continued

Docket No.	Petitioner	Description of the petition
24912	General Aviation Manufacturers	By letter dated January 22, 1986, the General Aviation Manufacturers Association (GAMA), Suite 801, 1400 K Street, NW., Washington, DC 20005, petitioned for two amendments to § 1.1 of the Federal Aviation Regulations (FAR). The first proposed amendment is to add a new definition to § 1.1, as follows: "V <sub>SE</sub> —Intentional One Engine Inoperative Speed, is the minimum speed, selected by the manufacturer, for intentionally rendering one engine inoperative, inflight, for pilot training. Note: V <sub>SE</sub> is predicated upon the maintenance of conservative controllability margins when one engine is suddenly rendered inoperative. Its selection is based upon the characteristics of the specific airplane to which it applies. However, in no case may it be lower than 1.05 V <sub>MC</sub> ." The second proposed amendment is to redesignate "Minimum Control Speed V <sub>MC</sub> " as defined in § 1.1, to "Air Minimum Control Speed (V <sub>ACA</sub> )."

Denial, October 1, 1987.

[FR Doc. 87-27065 Filed 11-24-87; 8:45 am]

BILLING CODE 4910-13-M

## Federal Trade Commission

### 16 CFR Part 13

[Docket No. D-8940]

#### Prohibited Trade Practices; Petition To Reopen Proceeding and Modify Order; Control Data Corp., et al.

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of period for public comment on petition to reopen the proceeding and modify the order.

**SUMMARY:** Control Data Corporation, a corporate respondent in the order in Docket No. D-8940, filed a petition on June 19, 1987, requesting that the Commission reopen the proceeding and either set aside or modify the order. A supplemental request to reopen the proceeding has been filed on November 5, 1987. This document announces the public comment period on the supplemental petition.

**DATE:** The deadline for filing comments in this matter is December 17, 1987.

**ADDRESS:** Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

Requests for copies of the petition should be sent to Public Reference Branch, Room 130.

**FOR FURTHER INFORMATION CONTACT:** Terrence J. Boyle, Enforcement Division, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326-3016.

**SUPPLEMENTARY INFORMATION:** The order in Docket No. D-8940 was published at 46 FR 13500 on February 23, 1981. The petitioner, Control Data Corporation, is the only respondent now remaining under the order. The other respondent, Automation Institute of America, Inc., was dissolved in 1981. The original request to reopen the proceeding was published at 52 FR

26534 on July 15, 1987. Petitioner is in the business of marketing entry-level vocational technical courses through its Control Data Institutes in eleven states. Petitioner now asks that Part II of the order be modified to delete the pro-rata refund requirements. The supplemental request was placed on the public record on November 4, 1987.

#### List of Subjects in 16 CFR Part 13

Training courses, Computer programming, Trade practices.

Emily H. Rock,

Secretary

[FR Doc. 87-27126 Filed 11-24-87; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 117

[CGD7-87-04]

#### Drawbridge Operation Regulations; Taylor Creek, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** At the request of Okeechobee County and the Florida Department of Transportation the Coast Guard is considering a change to the regulations governing the Taylor Creek bridge U.S. 441, at Okeechobee, Florida, by requiring that a longer advance notice of opening be given during certain periods. This proposal is being made because of relatively infrequent requests for bridge openings. This action should still provide for the reasonable needs of navigation.

**DATES:** Comments must be received on or before January 11, 1988.

**ADDRESSES:** Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW. 1st Avenue, Miami, Florida 33130-1608. The comments and other materials referenced in this notice will be available for inspection and copying on

the 4th Floor of the Brickell Plaza Federal Building, 909 SE. 1st Ave., Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Walt Paskowsky (305) 536-4103.

#### SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

#### Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

#### Discussion of Proposed Regulations

The bridge presently requires a 2 hour advance notice for an opening. On May 18, 1987, the Commander, Seventh Coast Guard District published a notice of proposed rulemaking (53 FR 18582) soliciting comments on a regulation that would have required 48 hours advance notice for an opening. Seven letters were received. All commenters objected to the 48 hour advance notice, citing difficulty in scheduling vessel movements that far in advance. Inability to predict weather conditions or exact time of return from voyages were cited as major objections to the proposal. One commenter questioned the cost savings to be realized by significantly increasing



advance notice requirements. No comments were received in support of the proposal.

The Florida Department of Transportation and the Okeechobee County Board of County Commissioners subsequently proposed to open the bridge upon 4 hours advance notice between 6 a.m. and 9 p.m. This period of operation is similar to the operating hours of the adjacent Taylor Creek lock operated by the South Florida Water Management District. Since vessel movement is affected by both the bridge and the lock, we are proposing the bridge be operated during the exact operating hours of the lock with 4 hour advance notice.

#### Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 6, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because so few vessels would be affected. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 117 continues to read as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.335 is revised to read as follows:

##### 117.335 Taylor Creek

The draw of the U.S. 441 bridge, mile 0.3 at Okeechobee, need not open; except that, from 5:30 a.m. to 9 p.m. May 1 to September 30, and from 5:30 a.m. to 8 p.m. October 1 to April 30, the draw shall open on signal if at least 4 hours notice is given.

Dated: November 11, 1987.

H.B. Thorsen,  
Rear Admiral, U.S. Coast Guard, Commander,  
Seventh Coast Guard District.

[FR Doc. 87-27139 Filed 11-24-87; 8:45 am]

BILLING CODE 4910-14-M

#### 33 CFR Part 117

[CGD7-87-60]

#### Drawbridge Operation Regulations; Whitcomb Bayou, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

**SUMMARY:** At the request of Pinellas County, the Coast Guard is considering a change to the regulations governing the Beckett Bridge on Riverside Drive at Whitcomb Bayou in Tarpon Springs, Pinellas County, Florida, by requiring that advance notice of opening be given seven days a week. This proposal is being made because of a very low volume of requests for opening of the draw. This action should relieve the bridge owner of the burden of having a person constantly available on weekends to open the draw and should still provide for the reasonable needs of navigation.

**DATES:** Comments must be received on or before January 11, 1988.

**ADDRESSES:** Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW. 1st Avenue, Miami, Florida 33130-1608. The comments and other materials referenced in this notice will be available for inspection and copying on the fourth floor of the Brickell Plaza Federal Building, 909 SE 1st Avenue, Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Ms. Zonia Reyes (305) 536-4103.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and address, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal.

The proposed regulations may be changed in light of comments received.

#### Drafting Information

The drafters of this notice are Ms. Zonia Reyes, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

#### Discussion of Proposed Regulations

The bridge presently opens on signal from 9 a.m. to 6 p.m. on Saturdays and Sundays. At all other times the draw opens on signal if at least 2 hours notice is given. The draw was opened 23 times in 1986. This is not considered frequent enough to warrant constant bridgetender service.

#### Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the bridge openings are infrequent. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.341 is revised to read as follows:

##### § 117.341 Whitcomb Bayou

The draw of the Beckett Bridge on Riverside Drive, mile 0.5 at Tarpon Springs, shall open on signal if at least two hours notice is given.



Dated: November 17, 1987.

M. J. O'Brien,

Captain, U.S. Coast Guard, Acting  
Commander, Seventh Coast Guard District.  
[FR Doc. 87-27140 Filed 11-24-87; 8:45 am]

BILLING CODE 4910-14-M

### 33 CFR Part 117

[CGD8-87-12]

#### Drawbridge Operation Regulations; Bayou Black, LA

AGENCY: U.S. Coast Guard, DOT.

ACTION: Proposed rule.

**SUMMARY:** At the request of the Louisiana Department of Transportation and Development, the Coast Guard is considering a change to the regulation governing the operation of the lift span bridge on U.S. Highway 90 over Bayou Black, mile 7.0 near Gibson, Terrebonne Parish, Louisiana, by permitting the draw to remain closed to navigation at all times. Presently the draw opens on call with a 24-hour advance notice. This proposal is being made because the bridge cannot now be safely operated for the passage of navigation. The bridge was originally built in 1919 and moved to its present location in 1946. The entire substructure is of treated timber bents over 40 years old. The total cost to bring the bridge up to current structural, mechanical and electrical operational standards would be \$695,000. In view of the cost and the absence of significant navigation on the waterway, this action should accommodate the needs of vehicular traffic and still provide for the reasonable needs of small boat traffic, the only navigation passing the bridge.

**DATES:** Comments must be received on or before January 11, 1988.

**ADDRESSES:** Comments should be mailed to Commander (ob), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130-3396. The comments and other materials referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names

and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. This proposed regulation may be changed in the light of comments received.

#### Drafting information

The drafters of this notice are John Wachter, project officer, and Lieutenant Commander James Vallone, project attorney.

#### Discussion of Proposed Regulation

Vertical clearance of the bridge in the closed position is 2 feet above mean high water. Navigation through the bridge consists solely of an occasional pleasure craft. During the period from 1979 to present the bridge opened an average of 6.2 times per year for passage of navigation. There is no commercial navigation through the bridge.

#### Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that there have been no requests for openings by commercial navigation and few requests for openings by small pleasure craft. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.425 is revised to read as follows:

#### § 117.425 Black Bayou.

The draws of the Terrebonne Parish Police Jury bridges, miles 7.5, 15.0, 18.7 and 22.5 between Gibson and Houma, shall open on signal if at least 24 hours notice is given. The draw of the US90-S20 bridge, mile 7.0 near Gibson, need not be opened for the passage of vessels.

Dated: November 12, 1987.

Peter J. Rots,

Rear Admiral, U.S. Coast Guard, Commander,  
Eighth Coast Guard District.

[FR Doc. 87-27141 Filed 11-24-87; 8:45 am]

BILLING CODE 4910-14-M

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 180

[OPP-300173; FRL-3294-2]

#### Peas; Definitions and Interpretations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

**SUMMARY:** This document proposes that 40 CFR 180.1(h) be amended to include lentils in the commodity definition of peas. This proposed amendment, which will expand and redefine the definition of peas, was submitted by the Interregional Research Project No. 4 (IR-4).

**DATES:** Comments, identified by the document control number [OPP-300173], must be received on or before December 23, 1987.

#### ADDRESSES:

By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA



without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

#### FOR FURTHER INFORMATION CONTACT:

By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1806.

**SUPPLEMENTARY INFORMATION:** The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted this request to EPA on behalf of Dr. Robert H. Kupelian, National Director, and the IR-4 Technical Committee.

IR-4 requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose that 40 CFR 180.1(h) be amended by adding *Lens culinaris* (lentils) to the specific raw agricultural commodities listing in column B, thereby expanding the definition "peas" in column A.

The IR-4 requested this amendment in order to clarify and update the relationship between the general category definition "peas" in column A and the specific raw agricultural commodities in column B.

The IR-4 supports this request by pointing out that "peas" should be precisely defined to include lentils, as follows: "*Cajanus cajan* (includes pigeon peas); *Cicer* spp. (includes chick peas and garbanzo beans); *Lens culinaris* (lentils); *Pisum* spp. (includes dwarf peas, garden peas, green peas, English peas, field peas and edible pod peas)." The growth habits, cultural and production practices, pest complex, and harvest techniques for peas and lentils are all similar.

The Agency concurs with IR-4 on the proposed revision of 40 CFR 180.1(h) to expand the general category "peas" in column A to include lentils in the corresponding listing of specific raw agricultural commodities in column B. This revision will expand the tolerances and exemptions established for residues of pesticide chemicals in or on the general category "peas" to include the specific raw agricultural commodity lentils. Based on the information considered by the Agency, it is concluded that the regulation established by amending 40 CFR Part 180 will protect the public health.

Therefore, it is proposed that 40 CFR 180.1(h) be amended as set forth below.

Interested persons are invited to submit written comments on the proposed amendment. Comments must bear a notation indicating the document control number, [OPP-300173]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

#### List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: November 12, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

#### PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1(h) is amended by revising the definition of "peas," to read as follows:

#### § 180.1 Definitions and Interpretations.

\* \* \* \* \*

(h) \* \* \*

A	B
Peas.....	<i>Cajanus cajan</i> (includes pigeon peas); <i>Cicer</i> spp. (includes chick peas and garbanzo beans); <i>Lens culinaris</i> (lentils); <i>Pisum</i> spp. (includes dwarf peas, garden peas, green peas, English peas, field peas, and edible pod peas). [NOTE: A variety of pesticide tolerances have been previously established for peas and/or beans. Chick peas/garbanzo beans are now classified in both the bean and the pea categories. For garbanzo beans/chick peas ONLY, the highest established pea or bean tolerance will apply to pesticide residues found in this commodity].

[FR Doc. 87-26915 Filed 11-24-87; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 49 CFR Part 391

[FHWA Docket No. MC-87-17]

#### Qualifications of Drivers; Diabetes

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The FHWA is requesting comments from interested parties on a petition submitted by the American Diabetes Association (ADA). The ADA requests that the FHWA initiate a rulemaking to allow a waiver on a case-by-case basis for insulin-using diabetics. The FHWA's current motor carrier safety regulations prohibit all persons with diabetes "requiring insulin for control" from driving a commercial motor vehicle in interstate or foreign commerce.

**DATES:** Written comments must be received on or before December 28, 1987.

**ADDRESSES:** All signed, written comments should refer to the docket number that appears at the top of this document and should be submitted (preferably in triplicate) to Room 4205, Office of Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., ET, Monday through Friday, except legal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366-4049; or Ms. Julie A. White, Office of Chief Counsel, (202) 366-1353, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

**SUPPLEMENTARY INFORMATION:** The ADA functions as an educational, research, and advocacy organization for diabetics in the United States. The ADA submitted its petition for rulemaking to the FHWA on October 7, 1986. Two private individuals also petitioned the FHWA to initiate rulemaking that would allow waivers for insulin-using diabetics. In October 1986, the FHWA accepted a petition from Mr. Troy Fuson of Livingston, Montana (Driver Qualification Docket No. R8-85-14D). In May 1986, the FHWA accepted a petition from Mr. David L. Kendall of Madrid, Iowa. The FHWA is combining their petitions and the ADA's petition as part of this ANPRM.



The FHWA sponsored a conference on Diabetic Conditions and Commercial Drivers. The conference was held at the Crystal City Marriot in Arlington, Virginia on September 9 and 10, 1987. The FHWA announced this public meeting in the **Federal Register** on September 3, 1987 (52 FR 33503). A copy of the conference report, when available, will be included in the docket file.

### Background

The FHWA's current motor carrier safety regulations prohibit all persons with diabetes "requiring insulin for control" from driving a commercial motor vehicle. 49 CFR 391.41. The ADA requests that the FHWA initiate a rulemaking to eliminate this "blanket prohibition" for insulin-using diabetics and allow a waiver on a case-by-case by FHWA.

The FHWA uses three types of standards for the physical qualifications of commercial motor vehicle drivers—blanket prohibition, physician's judgment, and a case-by-case waiver by FHWA. Under a "blanket prohibition" as the ADA refers to it, a person is not medically qualified based on a physician's diagnosis. Insulin-using diabetics are not medically qualified. A person is also not medically qualified if he or she has epilepsy, poor vision (worse than 20/40 vision in each eye), or a severe hearing loss.

Under the physician's judgment standard, the FHWA relies solely on the physician to determine whether an individual's condition will interfere with his or her ability to control and drive a motor vehicle safely. Some conditions that fall under this standard are arthritis, muscular disorders, high blood pressure, and respiratory dysfunction.

Under a case-by-case waiver, the FHWA can grant a waiver to a person who has certain physical deficiencies but is otherwise qualified to drive. If a person has limited mobility in an extremity or has loss of a foot, a leg, a hand or an arm, then he or she needs a formal waiver by the FHWA in order to operate a commercial motor vehicle. The ADA recommends that insulin-using diabetics be subject to a case-by-case waiver.

Although diabetes was not specifically mentioned in FHWA's regulations until 1970, as early as 1939, Federal Motor Carrier Safety Regulations required a urine glucose test as part of the medical examination for

determining whether a person was physically qualified to drive a commercial motor vehicle in interstate or foreign commerce. The FHWA established the current standard for diabetes in 1970. It states that a "person is physically qualified to drive a motor vehicle if he has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control." 49 CFR 391.41. The FHWA established the standard mainly due to the results of several accident studies indicating that diabetic drivers have higher rate of accidents compared to the general driving population.

On March 28, 1977, the FMWA issued an advance notice of proposed rulemaking (ANPRM) to request public comment on changing the standard for insulin-using diabetics. 42 FR 16452. Based on the substantive medical comments that the FHWA received and the medical literature cited in the ANPRM, the FHWA determined that a change was not warranted. The FHWA terminated the rulemaking on November 3, 1977 (42 FR 57488), and the 1970 standard remained intact. Copies of these dockets are available from the FHWA at the above address.

**ADA's RECOMMENDED WAIVER Criteria:** The ADA requests that the FHWA initiate a rulemaking to allow a waiver on a case-by-case basis for insulin-using diabetics. Section III of the ADA's petition, entitled "Text of Amendment Proposal," outlines the ADA's recommended criteria and procedures for evaluating insulin-using diabetics who request a waiver. The ADA's states that an insulin-using diabetic should be considered for a waiver if the individual has "no otherwise disqualifying disease, especially significant complications of diabetes such as arteriosclerotic coronary or cerebral disease, other cardiac, renal, or eye disease." The ADA proposes that an applicant for a waiver provide the following information to the FHWA:

1. Medical history (including hospitalization reports);
2. Motor vehicle accident history with an explanation of those incidents related to illness or incapacitation;
3. A signed release form to provide the FHWA confidential information and a minimum of 3 letters from employers, work associates, physicians, or other health care and diabetes support personnel, that document the absence of incapacitation or mental confusion due to "insulin reaction and/or diabetic acidosis, etc.;" and

4. A complete medical evaluation by the applicant's personal physician and, if he or she is not a diabetologist, a consultation by a specialist in endocrinology, concerning the applicant's medical history, current status and prognosis both short (2-5 years) and long term (10-20 years).

The ADA proposes that the medical evaluation include thorough, detailed blood tests and related examinations to detect the effects of diabetes. The ADA also proposes that the applicant "obtain and utilize a digital whole blood monitoring device which is portable and can be easily used for the testing of blood glucose concentrations before, during and after driving." An applicant over 40 years of age would be required to provide the results of a "maximal exercise stress test."

The ADA proposes the following monitoring and reevaluation procedures for a person with diabetes who drives a commercial motor vehicle:

1. Minimum twice daily—logs of whole blood glucose concentrations to be kept continuously and provided to the specialist upon reevaluation;
2. Every 6 months—a complete medical reevaluation by a specialist;
3. Annually—confirmation by a specialist that the person with diabetes can demonstrate the accuracy of blood glucose concentrations; and
4. Annually—ophthalmological confirmation of absence of retinal disease.

The ADA proposes that a driver carry the necessary supplies and materials on-board the vehicle to test his or her "blood glucose concentration" within an hour before driving and approximately every 4 hours while driving.

The ADA recommends a 3-step process for a person with diabetes to petition the FHWA for waiver:

#### Step 1: Clinical Testing

The person would undergo a complete physical examination (including all relevant laboratory testing) by his or her personal physician and, if he or she is not a diabetologist, a consultation by a specialist in endocrinology. The physician would provide the results on prescribed forms.

#### Step 2: Review of Examination Results and Recommendation by the U.S. Department of Transportation (DOT) Physician.

The person would submit the examination results to the U.S. DOT physician for review and assessment of the driver's physical qualifications in



accordance with the Federal medical standards.

#### Step 3: Final U.S. DOT Approval

Based on its physician's review and recommendation, the U.S. DOT would determine whether to grant or deny a waiver.

The ADA states that the FHWA will need to assess its resources and determine how best to modify and implement specific procedures for considering a request for medical certification of a person with diabetes.

#### Potential Adverse Safety Effects:

Based on the FHWA's analysis presented in Appendix B, allowing waivers for insulin-using diabetics to operate commercial motor vehicles could result in an additional 5,400–8,600 accidents a year. The accident rate for insulin-using diabetic drivers would be 20–32 percent (5,400 to 8,600 accidents/27,000 drivers). By comparison, the accident rate for the general population of truck drivers is less than 1 percent (39,273 accidents/5,000,000 drivers=0.8 percent).

These results reflect the FHWA's estimate of the accidents resulting from the effects of hypoglycemia caused by diabetes. Hypoglycemia is an abnormal decrease of sugar in the blood. Severe hypoglycemia incapacitates a person, requiring treatment and assistance to prevent coma or convulsions. Mild hypoglycemia has more subtle effects, resulting in a loss of concentration and awareness similar to the effects of fatigue.

#### Request for Public Comment

The FHWA requests comments from interested parties on whether we should initiate rulemaking to allow a waiver on a case-by-case basis for insulin-using diabetics, as recommended by the ADA. We are interested in receiving comments on the ADA's petition, the ADA's recommended criteria and procedure, additional or alternative criteria, and any other data or information on the potential safety effects of allowing insulin-using diabetics to drive large trucks and buses. To help commenters focus on particular aspects of the ADA's petition and to assist us in reviewing the petition and the docket comments, we pose several specific questions in this portion of the ANPRM.

#### Question Area 1: Waiver Criteria

(a) What are reliable and reasonable criteria for determining the likelihood that an insulin-using diabetic will experience hypoglycemia? What is the likelihood of an insulin-using diabetic experiencing hypoglycemia if the ADA recommended standard is used?

(b) Would the results of the specific medical examinations and laboratory tests recommended by the ADA in Section III of its petition (see Appendix A) constitute a comprehensive evaluation of an individual's health? To what extent will they indicate the likelihood of an insulin-using diabetic to experience hypoglycemia?

#### Question Area 2: Waiver Procedure

(a) What information should the FHWA require an insulin-using diabetic to provide when requesting a waiver—the medical evaluation recommended by the ADA, a letter from a physician, the driver's licensing record, insurance records, and/or other information?

(b) What should be the qualifications of the U.S. DOT physician who reviews the waiver request under the ADA's recommended procedures?

(c) Would it be appropriate for the FHWA to establish a voluntary committee of physicians, diabetologists, and endocrinologists to review waiver requests? How many people should serve on the panel and what should be their qualifications?

(d) Should the FHWA rely solely on the individual's personal physician, or a consulting diabetologist or an endocrinologist to determine whether an insulin-using diabetic's condition would interfere with his or her ability to control and drive a commercial motor vehicle safely?

(e) What other alternatives are there to case-by-case waivers granted by FHWA?

(f) What type of restrictions should be placed on individual waivers—time period for reevaluation or renewal, limited hours of service, limited number of traffic violations or accidents related to hypoglycemia, and/or other restrictions?

#### Question Area 3: Self-Monitoring of Blood Glucose Concentration

(a) How frequently should an insulin-using diabetic monitor his or her blood glucose concentration—twice daily (whether or not on duty), every 4 hours while on duty, or according to some other monitoring schedule?

(b) What type of documentation should an individual keep on monitoring blood glucose concentration—self-written logs of glucose measurements or electronic testing devices? To what extent are the devices tamperproof?

(c) Upon periodic reevaluation of an insulin-using diabetic for renewal of a waiver, how should the physician use the documentation for monitoring blood glucose concentration?

#### Question Area 4: Safety and Accident Risks

(a) Given the ADA's recommended waiver criteria and procedures, is the

FHWA's estimate of the potential adverse safety risks accurate and reasonable (see Appendix B)? If not, what is an accurate and acceptable level of risk for allowing an insulin-using diabetic to operate a commercial motor vehicle?

(b) From a medical standpoint, do the advances in self-management of diabetes and self-monitoring of blood glucose concentration significantly reduce the risks of an insulin-using diabetic driving large trucks and buses? To what extent do these advances reduce or increase the likelihood of an insulin-using diabetic experiencing hypoglycemia?

(c) What are the potential effects of unanticipated changes in work hours and conditions, diet, and driving stress on an insulin-using diabetic? To what extent do these working conditions affect the risk of an insulin-using diabetic experiencing hypoglycemia?

(d) What other information, data, or studies are available on the potential safety and accident risks of allowing persons with diabetes to drive large trucks and buses? What data or studies are available on the experience of insulin-using drivers operating intrastate or in commercial zones?

(e) What information, data, or studies are available on the potential costs and benefits of allowing persons with diabetes to drive large trucks and buses?

#### Other Comments

Commenters are not limited to responding to the questions raised above and may submit any facts and views consistent with the intent of this notice.

Representatives of the motor carrier industry have voiced concern about a possible shortage of drivers in the 1990's. As a result of changing demographics, fewer young people are entering the work force. Driver licensing qualifications will become more stringent as the States and the FHWA implement the Commercial Driver's Licensing Program. The FHWA has proposed the elimination of commercial zone exemptions; and some drivers, who now operate in commercial zones, likely will not meet the FHWA's physical qualifications. In light of these factors, the FHWA is interested in comments on the need to provide more latitude for insulin-using diabetics to drive commercial motor vehicle in interstate and foreign operations.

#### List of Subjects in 49 CFR Part 391

Driver qualifications-diabetic standard, Highways and roads, Highway safety, Motor carriers, Physical



standards, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

(49 U.S.C. App. 2505; 49 U.S.C. 3102; and 49 CFR 1.48.)

Issued on: November 19, 1987.

R.D. Morgan,

Executive Director, Federal Highway Administration.

#### Appendix A—The American Diabetes Association's Petition to the Federal Highway Administration

*Before the Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety*

49 CFR Part 391

#### Medical Qualifications of Drivers Standards for Persons With Diabetes Requiring Insulin; Petition for Rulemaking of American Diabetes Association

This Petition for Rulemaking is filed by the American Diabetes Association, pursuant to 49 CFR Part 389, requesting that the Director of the Bureau of Motor Carrier Safety, Department of Transportation, (the "Bureau") initiate rulemaking proceedings to amend the provisions of 49 CFR 391.41 and 391.43 which define the physical qualifications of persons with diabetes to drive commercial motor vehicles in interstate commerce. At present, these rules bar all persons with an established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control from medical qualification. 49 CFR 391.41(b)(3), 391.43(c). The purpose of this Petition is to request that the Director initiate a rulemaking proceeding to address the question of whether the physical qualifications of persons with diabetes requiring insulin to drive commercial motor vehicles in interstate commerce should be determined on an individual, case-by-case basis.

#### I. Interest of the American Diabetes Association in the Action Requested

The American Diabetes Association ("ADA") is a non-profit organization that has over 800 affiliates and chapters and over 220,000 members, including lay persons, physicians, research scientists, nurses, dietitians, and educators. As its ongoing mission, the ADA seeks to promote the search for a preventive and cure for diabetes, and to improve the well-being of all people with diabetes and their families. The ADA consistently has played a strong advocacy role on behalf of both insulin-

dependent and non-insulin-dependent individuals with diabetes, promoting public awareness of diabetes and encouraging fair and equitable legal and societal standards applicable to persons with diabetes.

Diabetes is a disease in which the body does not produce or properly use insulin, which is needed to convert glucose and starches into energy needed for daily life. Prior to the discovery of man-made insulin in 1921, those who developed diabetes in childhood or early adulthood had little if any hope of living beyond a year or two after diagnosis. Although the discovery of insulin enabled these individuals to control diabetes, this scientific development did not constitute a cure.

As is fully discussed elsewhere in this Petition, exciting progress in improved treatment and care for people with diabetes has been achieved in recent years. New insulin delivery systems, self blood glucose monitoring, laser therapy to prevent blindness and eye disorders, pancreas transplants, and better understanding of dietary needs are some of the recent advances that are resulting in longer, healthier and more productive lives for many people with diabetes. These advances have also opened professional doors for individuals with insulin-dependent diabetes, who now can be found working in virtually every professional endeavor.

Diabetes affects some eleven million people in the United States, and each year about 500,000 new cases are diagnosed. The total number of individuals who have diabetes or whose family members have diabetes therefore comprises a very significant portion of the population of this country. Consistent with its mission of improving the well-being of all people with diabetes and their families, the ADA is committed to combatting blanket policies, both in the public and private sectors, which unduly restrict individuals with diabetes in their pursuit of useful and productive lifestyles.

Perhaps the most profound obstacle that people with diabetes and their families face in seeking to realize their full potential is job discrimination. In many cases, people with diabetes are subjected to blanket prohibitions that absolutely prevent any individual who uses insulin from being considered for a certain type of employment. In February 1984, the ADA formally adopted an employment policy that disapproves of wholesale discrimination against persons with diabetes:

#### *American Diabetes Association Employment Policy*

Any person, whether insulin-dependent or non-insulin-dependent, should be eligible for any employment for which he or she is individually qualified.

This policy does not state that an individual's diabetes should be excluded from consideration in determining his or her qualification for employment. What the policy does mean is that the hiring decision should and must be based upon the individual's qualifications, including such factors as the degree of control achieved with insulin and the reasonable requirements of the job or license. The taking of insulin is not, in itself, a justification to exclude a person from eligibility.

The ADA's opposition to job discrimination against insulin-dependent individuals explains the Association's interest in 49 CFR Part 391. These medical standards prevent *all* insulin-requiring persons from operating commercial vehicles in interstate or foreign commerce. The rules thereby create an automatic presumption that every person who takes insulin is medically unqualified, precluding any consideration of the individual factors involved. This blanket prohibition is in direct conflict with a second policy statement recently adopted by the ADA:

#### *American Diabetes Association Policy on Driver's and Pilot's Licenses*

Any person, whether insulin-dependent or non-insulin-dependent, should be eligible for any driver's or pilot's license for which he or she is individually qualified.

This policy confirms the concept that decisions affecting persons with diabetes should be made on an individual, case-by-case basis, and extends that concept to licensure determinations.

The ADA's interest in questions affecting the licensure of persons with diabetes is by no means new. In fact, as discussed more fully below, the Association supported the Bureau's 1977 decision continuing the blanket prohibition against the licensure of persons who take insulin to operate commercial vehicles in interstate commerce. See *Federal Register*, Vol. 42, No. 212, pages 57489, 57491 (Thursday, November 3, 1977). The Association's reversal of its prior position is the result of advancements in medical technology and treatment. This Petition will set forth proposed guidelines for use in making individualized evaluations of the medical qualifications of persons with diabetes, will describe the medical and



technological advancements which justify this new approach, and will set forth the newly evolving body of case and statutory law prohibiting all forms of blanket job discrimination against people with diabetes.

## II. Text of Pertinent Rules

The substance of the regulations which are the subject of this Petition for Rulemaking is as follows:

### § 391.41 Physical qualifications for drivers

(a) A person shall not drive a motor vehicle unless he is physically qualified to do so and \* \* \* has on his person the original, or a photographic copy, of a medical examiner's certificate that he is physically qualified to drive a motor vehicle.

(b) A person is physically qualified to drive a motor vehicle if that person \* \* \*

(3) Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control.

49 CFR 391.41 (1985)

### § 391.43 Medical examination; certificate of physical examination

(a) Except as provided in paragraph (b) of this section, the medical examination shall be performed by a licensed doctor of medicine or osteopathy \* \* \*.

(c) The medical examination shall be performed, and its results shall be recorded, substantially in accordance with the following instructions and examination form: \* \* \*

*Diabetes.* If insulin is necessary to control a diabetic condition, the driver is not qualified to operate a motor vehicle. If mild diabetes is noted at the time of examination and it is stabilized by use of a hypoglycemia drug and a diet that can be obtained while the driver is on duty, it should not be considered disqualifying. However, the driver must remain under adequate medical supervision. The physician must date and sign his findings upon completion of the examination.

49 CFR 391.43 (1985)

## III. Text of Amendment Proposed

Current regulations, as set forth in Section II of this Petition, bar all persons with diabetes who require or at any time required insulin for control from medical qualification to drive commercial motor vehicles in interstate commerce. The ADA recommends the adoption of criteria and procedures that will replace this blanket prohibition with individual, case-by-case evaluations of applicants with diabetes who claim that they are medically qualified. The following set of stringent guidelines are recommended as substantive criteria to be used in evaluating applicants and in monitoring persons with diabetes who obtain their medical certification.

### Guidelines for Applicants With Diabetes Requiring Control by Insulin

Persons with diabetes who require insulin who have no otherwise disqualifying disease, especially significant complications of diabetes such as arteriosclerotic coronary or cerebral disease, other cardiac, renal or eye disease and who meet the following criteria are eligible to apply for a license to operate commercial motor vehicles in interstate commerce.

1. Provide copies of all hospitalization reports if admitted for any cause, including accident and injuries. Provide copies of treating physician consultation notes for diagnostic examinations, special studies, follow-up, etc.

2. Report and explain any automobile or other incidents or accidents whether resulting in injury or vehicular/equipment damage. Explain cause, especially if related to illness or incapacitation.

3. Provide letters (three minimum) from work associates/employers, physicians, or other health care and diabetes support group personnel, to document absence of subtle or significant incapacitation or mental confusion due to insulin reaction and/or diabetic acidosis, etc. In particular, occurrences or lack of diabetic hypoglycemia-related events during the past two years should be documented. Full names, addresses, work and home phone numbers should be provided by all respondents. The applicant also must provide the DOT with a signed release form for confidential information.

4. A complete medical evaluation by the applicant's personal physician and if he or she is not a diabetologist, a consultation by a specialist in endocrinology, concerning the applicant's history, current status, and prognosis both short (2-5 years) and long term (10-20) years. The report must include a general physical examination including height, weight, build, and physical defects or signs, and at a minimum the following:

If under age 40: a. Fasting blood/serum studies (glucose, cholesterol, HDL, triglycerides), complete blood count and urinalysis and three readings of glycosolated hemoglobin ( $A_{1c}$ ) concentration (and lab reference concentration) during the last six months (six months prior, three months prior and current). Resting electrocardiogram (ECG). Blood pressure reading (sitting) at rest on at least two occasions, a.m. and p.m., approximately one week apart. Elevated blood pressure, medication for hypertension, or other evidence of any cardiovascular abnormality will require

a maximal concentration stress test EKG study.

b. Ophthalmological confirmation of absence of retinal disease. Preferably by a retinal specialist with dilated eye examination.

c. Examination and tests to detect any peripheral neuropathy, or circulatory deficiencies of the extremities, when symptomatic.

d. A detailed report of insulin dosages and types, diet utilized for control and any significant lifestyle factors such as smoking, alcohol use, other medications or drugs taken.

e. Applicants must obtain and utilize a digital whole blood monitoring device which is portable and can be easily used for the testing of blood glucose concentrations before, during and after driving. Monitors with memories, i.e., chip in monitor, to record blood glucose concentrations are highly recommended. A log of the last month of whole blood glucose concentrations determined by the applicant at least twice a day and distributed during the month to indicate concentrations at four hour intervals during the waking hours shall be provided. This log should be certified as authentic by the specialist. Control of blood glucose concentration is acceptable if fasting blood glucose concentrations are normally between 60 and 140 and postprandial concentrations are normally between 140 and 200. Blood glucose concentrations falling below 50 or above 300 two or more times in a month require reevaluation by a specialist.

If over age 40: f. In addition to the above, all applicants over age 40 shall present the results of a maximal exercise stress test. Clear copies of all ECG tracings and an interpretation will be provided. Applicants demonstrating abnormal stress tests cannot anticipate certification. However, should the specialist advise and conduct additional clinically indicated studies to rule out underlying arteriosclerotic disease and no evidence of significant disease is found, the actual pictures and reports may be submitted for consideration.

### Guidelines for Persons With Diabetes Driving Interstate Trucks

1. A complete medical reevaluation by a specialist every six months, with readings of glycosolated hemoglobin ( $A_{1c}$ ) concentrations.

2. Logs of whole blood glucose concentrations with at least two measurements daily to be kept on a continuing basis and submitted to the specialist upon reevaluation. The specialist will consider the logs in conjunction with the glycosolated



hemoglobin readings to certify that the clinical picture is consistent. Control of blood glucose concentration is acceptable if fasting blood glucose concentrations are normally between 60 and 140 and postprandial concentrations are normally between 140 and 200. Blood glucose concentrations falling below 50 or above 300 two or more times in a month require reevaluation by a specialist.

3. The specialist will confirm on an annual basis that the person with diabetes can demonstrate accuracy of measurements of blood glucose concentrations i.e., within 25 percent of actual concentration.

4. Annual ophthalmological confirmation of absence of retinal disease.

#### *Protocol for Driving*

Supplies required while driving include: Blood sampling lancet; personal blood glucose monitor and strips; a source of rapidly absorbable glucose; insulin; and syringes or pump, as appropriate.

All disposable materials must be within their expiration dates.

Blood glucose concentration must be tested within an hour before driving and approximately every 4 hours while driving and appropriate measures taken if necessary. While driving, should circumstances preclude a particular test, intake of an appropriate snack or other source of glucose is an acceptable alternative. However, no two consecutive tests should be replaced by the ingestion of glucose.

#### *Process for Evaluation and Review of Applications*

Implementation of the provisions recommended in this Petition will necessitate the designation of a set of procedures to enable the Bureau to undertake a thorough evaluation of each applicant's qualifications. The ADA recognizes that this task falls within the expertise of the Department of Transportation, which can best evaluate the extent of available resources, including staff, and existing procedures for review of medical records and certifications. For this reason, the ADA declines at this time to recommend specific regulatory provisions governing the processing of applications for medical certification by persons with diabetes who require insulin. As an alternative approach, the following constitutes a general description of the proposed methodology for processing applications:

1. *Clinical Testing.* As an initial matter, the applicant will undergo a thorough physical examination,

including all relevant blood and urine testing, conducted by his or her personal endocrinologist or diabetologist. The specialist would conduct initial threshold testing for the purpose of ascertaining whether or not the applicant is in compliance with the medical guidelines. The specialist would set forth the results of the examination and testing on a prescribed form specifying the necessary test results and medical information which are required.

2. *Review of Examination Results and Recommendation by Department of Transportation Physician.* The results of the initial examination would be forwarded to a Department physician, who would assess the applicant's qualifications pursuant to the medical guidelines. On the basis of that assessment, a recommendation would be made to the Department with regard to whether or not a license is appropriate.

3. *Final Approval by the Department of Transportation.* The final stage in the proposed procedure for processing applications would be medical certification by a central authority within the Department of Transportation. The decision to certify would be based upon the recommendation of the Department's physician and his review of the results of initial examination. This final step in the process would vest final decision making authority solely within the Department.

#### **IV. Information and Arguments to Support the Request for Rulemaking**

##### *A. Recent Advancements in Diabetes Self-Management Warrant Re-examination of the Blanket Prohibition Against Licensing of Individuals With Diabetes Requiring Insulin*

In reaching its decision in 1977 to continue the blanket prohibition against medical certification of persons with diabetes who require insulin, the Bureau relied heavily on the opinions and documentation submitted by the ADA's Committee on Employment and Opportunities. During the ensuing nine years, significant medical advances have been accomplished which have enabled persons who take insulin to achieve remarkably improved control over their blood glucose concentrations, to delay and diminish the long-term complications of diabetes, and to achieve improved dietary management for persons with diabetes. These gains have been achieved through the development of improved diagnostic techniques in combination with a variety of new self-management

techniques which lead to dramatically improved metabolic control of diabetes.

The comments and documentation submitted by the ADA in 1977 in support of the blanket prohibition relied primarily upon information and data which had been compiled in the 1960's, including evidence which dated back to 1939 and 1940.<sup>1</sup> For example, the Committee referred to "the proneness of individuals to involvement in traffic accidents \* \* \* during hypoglycemic attacks," relying on studies which had been conducted prior to 1968. The Committee also cited a number of ADA papers on employment policy which had originally been presented in the 1960's, and which were simply reiterated in the early 1970's.

In light of the failure of the 1977 submissions to present evidence concerning the medical advancements in diabetes control achieved after the late 1960's, the Bureau's present restrictions are based in substantial part on the status of diabetes treatment and control as it existed twenty years ago. This request for renewed examination by the Bureau of medical advances in diabetes care is therefore timely and appropriate.

#### **Background**

Diabetes mellitus is a metabolic disorder that results in persistent hyperglycemia—an abnormally high amount of glucose in the blood.<sup>2</sup>

Scientists now believe diabetes is actually several different diseases with different causes, all with the same result: The body cannot efficiently utilize carbohydrates. Glucose is the end product of carbohydrate metabolism which is then used as the body's primary fuel. The glucose enters the body's cells with the help of insulin and is used for energy by the muscles. Excess glucose is stored in the liver in the form of glycogen to be used later when the blood glucose falls too low. However, if the pancreas fails to secrete insulin or secretes an inadequate amount of insulin then the glucose cannot permeate the cells. Thus, the glucose accumulates in the blood. Though there is plenty of glucose available, it is not used efficiently.

In its most serious form, diabetes is insulin requiring.<sup>3</sup> There are

<sup>1</sup> The Bureau relied heavily on the ADA's position and submissions. See, 42 FR No. 212, p. 57489, November 3, 1977.

<sup>2</sup> S. Mirsky M.D. & J. Heilman, Controlling Diabetes the Easy Way, at 5-8 (1981) [hereinafter cited as Mirsky & Heilman].

<sup>3</sup> *Id.*, at 10-11.



comparatively few people with insulin-requiring diabetes mellitus—less than fifteen percent of the total number of people with diabetes mellitus. For these people, the pancreas's production of insulin is so low or nonexistent that they must take insulin injections to compensate. Nevertheless, with supplementary insulin, aided by diet and exercise, the blood glucose of a person with insulin-requiring diabetes mellitus can be kept relatively normal.

#### Self-Monitoring of Blood Glucose Concentration

The past five years have seen a virtual explosion of new knowledge regarding diabetes mellitus.<sup>4</sup> Developments in the self-monitoring of blood glucose concentrations, diet, exercise, and insulin delivery have become the key to the successful self-management of insulin-requiring diabetes mellitus.<sup>5</sup> While good medical care remains necessary, in the final analysis individuals with diabetes can now take an active day-to-day role in the management of their disease.<sup>6</sup> The new self-monitoring techniques allow people with diabetes to learn to adjust their own insulin dose and allow great flexibility in their lives. After being taught the basic physiology and approach to the management of diabetes, these people develop a vast amount of practical knowledge which makes them virtual experts in the management of the disease.<sup>7</sup>

One of the most important goals of diabetes self-management is the maintenance of blood glucose concentrations within physiologic ranges, thus preventing symptoms of either high or low blood glucose. In the past, it was difficult to assess blood glucose control because of the reliance primarily on urine testing. Urine testing is only a reflection of blood glucose, and does not measure the actual glucose concentration.<sup>8</sup> By the time glucose

appears in the urine, it usually means that blood glucose has been high for some time.<sup>9</sup> Laboratory tests could be performed but they were not of much use to someone who wished to monitor their glucose concentration on a consistent basis at home. Today, there are simple, practical, and convenient test methods available to measure one's blood glucose concentration. Since these tests may be used anywhere, the term "home blood glucose monitoring" has been replaced by "self-monitoring".

Self-monitoring refers to the measurement of blood glucose by the individual, and is accomplished by taking blood from a finger stick, developing a color on a reagent strip, and subsequently measuring the reaction.<sup>10</sup> The easiest method of measurement is done by using chemically treated paper strips.<sup>11</sup> The results of the sample are measured by comparing the strip with a color chart on the container. This is a simple and inexpensive method. Medical studies have indicated that strip techniques provide estimates of the glucose concentration that are in sufficient agreement with the laboratory determinations to suggest that they could be of use in self blood glucose monitoring.<sup>12</sup> Further, studies have indicated that reagent strips not requiring the use of a reflectance meter provide a technique of self blood glucose monitoring similar in performance to those using reflectance meters.<sup>13</sup> A more sophisticated tool is the reflectance color meter which has a microcomputer that reads and displays the blood glucose concentration. Reflectance meters are widely available and are often reimbursable by private insurance companies as well as Medicare.<sup>14</sup>

With time, persons with diabetes who practice self-monitoring develop a sense of control over their diabetes and have the capability of judging the effect of many factors on their condition. Ultimately, they learn how to make

appropriate adjustments in diet or insulin, or both, depending on the circumstances.<sup>15</sup> Not only is it simple to determine blood glucose during any 24-hour period, but persons with diabetes can now monitor blood glucose in a specific instance.<sup>16</sup> In sum, self-monitoring gives instant feedback so that a person with diabetes can know their blood glucose concentration immediately at any time or place.

As a result of the advent of these new monitoring techniques, increased medical emphasis is being placed on self-management of diabetes.<sup>17</sup> Self-monitoring of blood glucose is gaining increasing acceptance as a tool in assessing diabetes management<sup>18</sup> such that self-monitoring of blood glucose concentrations by individuals has become a *sine qua non* for the achievement of physiologic blood glucose control in insulin-requiring diabetes mellitus.<sup>19</sup>

A number of clinical studies have been conducted to verify the relationship between self-monitoring and the improved control of glucose concentrations.<sup>20</sup> Glucose determinations by individuals with diabetes were found to be as reliable as those performed in a laboratory.<sup>21</sup>

<sup>15</sup> Schnatz & Crofford, at 55.

<sup>16</sup> Aloia, Donohue-Porter & Schlusell, at 47, see also, A. Krosnick, *Self-Management, Patient Compliance, and the Physician* 2 Diabetes Care 124, 125 (Jan.-Feb. 1980).

<sup>17</sup> Solowiejczyk & Baker, at 428.

<sup>18</sup> M. Reeves, S. Forham, J. Skyler, & C. Peterson, *Comparison of Methods for Blood Glucose Monitoring* 4 Diabetes Care 404 (May-June 1981) [hereinafter cited as Reeves & Forham].

<sup>19</sup> P. Kublis, A. Rosenbloom, D. Lezotte, J. Silverstein, P. Cimino, E. Rosenbloom, & C. Harvey, *Comparison of Blood Glucose Testing Using Reagent Strips With and Without a Meter (Chemstrips bG and Dextrastix/Dextrometer)* 4 Diabetes Care 417 (May-June 1981).

<sup>20</sup> R. Gibbins, J. Saunders, C. Rowlands, J. Harding-Dempster, A. Cavenagh, *Does Home Monitoring of Blood Glucose Work in General Practice?* 287 Br. Med. J. 801, 803 (Sept. 17, 1983) [hereinafter cited as Gibbins & Saunders], see also C. Peterson, R. Jones, A. Dupuis, B. Levine, R. Berstein, & M. O'Shea, *Feasibility of Improved Blood Glucose Control in People with Insulin-Dependent Diabetes Mellitus*, 2 Diabetes Care 329, 334 (July-Aug. 1979); G. Umpierrez, J. Reed, S. Thacker, & L. Phillips, *Technical Section: Preliminary Studies of Diabetic Decompensation Assessed With Bedside Glucose-Monitoring Techniques*, 9 Diabetes Care 77-80 (Jan-Feb. 1986) J. Skyler, M.D., *Patient Self-Monitoring of Blood Glucose*, Clinical Diabetes 12 (July-Aug. 1983) [hereinafter cited as Skyler].

<sup>21</sup> Gibbins & Saunders, at 803, see also, Reeves & Forham, at 405, D. Schade, R. Eaton, W. Mitchell, & N. Friedman, *Comparison of Methods for Blood Glucose Monitoring* 4 Diabetes Care 420, 423 (May-June 1981).

<sup>4</sup> D. Guthrie R.N. & R. Guthrie, M.D., *The Disease Process of Diabetes Mellitus: Definitions, Characteristics, Trends, and Developments* 18 Nursing Clinics of North America 617, 623 (Dec. 1983) [hereinafter cited as Guthrie & Guthrie].

<sup>5</sup> J. Aloia, M.D., P. Donohue-Porter, R.N., L. Schlusell, R.D., *Diabetes: The Comprehensive Self-Management Handbook*, at 177 (1984) [hereinafter cited as Aloia, Donohue-Porter & Schlusell].

<sup>6</sup> Mirsky & Heilman, at 22.

<sup>7</sup> J. Solowiejczyk & L. Baker, *Physician-Patient Communication in Chronic Illness*, 4 Diabetes Care 427 (May-June 1981) [hereinafter cited as Solowiejczyk & Baker]. Diabetes Care is a peer-reviewed journal with all articles judged solely on the basis of scientific merit.

<sup>8</sup> Mirsky & Heilman, at 31.

<sup>9</sup> R. Clements, Jr., N. Keane, K. Kirk, & B. Boshell, *Comparison of Various Methods for Rapid Glucose Estimation* 4 Diabetes Care 392, 394 (May-June 1981).

<sup>10</sup> Aloia, Donohue-Porter & Schlusell, at 464.

<sup>11</sup> B. Shapiro, P. Savage, D. Lomatch, T. Gniadek, R. Forbes, R. Mitchell, K. Hein, R. Starr, M. Nutter, & B. Scherdt, *A Comparison of Accuracy and Estimated Cost of Methods for Home Blood Glucose Monitoring* 4 Diabetes Care 396, 402 (May-June 1981).

<sup>12</sup> D. Schnatz, M.D., & O. Crofford, M.D., *Diabetes Mellitus: Problems in Management*, at 54-55 (1982) [hereinafter cited as Schnatz & Crofford].

<sup>13</sup> Aloia, Donohue-Porter & Schlusell, at 51-54.

<sup>14</sup> C. Valenta, R.N., *Urine Testing and Home Blood Glucose Monitoring* 18 Nursing Clinics of North America 645, 657 (Dec. 1983), see also, Schnatz & Crofford, at 55.



These individuals were able to learn the skills to cope with managing their own disease.<sup>22</sup> A high degree of patient compliance was found; thus, a program of self-management for people with diabetes requiring insulin was deemed feasible.<sup>23</sup>

Another tremendous innovation in the monitoring of blood glucose was the development of the glycosylated hemoglobin (HbA<sub>1c</sub>) test.<sup>24</sup> This test is a measure of the mean blood glucose concentration over a period of weeks to months.<sup>25</sup> The glycosylation of hemoglobin is continuous through the life span of the red blood cell, so measurements such as hemoglobin A<sub>1c</sub> provide an integrated value of the blood glucose concentration over time and can be used to determine the existence of irregular glucose concentration. The life span of hemoglobin in the red blood cell is 100-120 days. Thus, the HbA<sub>1c</sub> test is an excellent marker of control.<sup>26</sup>

A second element in the self-monitoring of diabetes is the importance of a meal plan.<sup>27</sup> The major objective of the meal plan is to assure consistency in the amounts of carbohydrates and fats consumed.<sup>28</sup> An irregular eating schedule is established which coordinates food consumption with the temporal action of insulin, and thereby avoids wide fluctuations in blood glucose and hypoglycemic reactions. The meal schedule is established with the caveat that each individual's intake must fit his or her activity and work pattern. Furthermore, the proportions and kinds of food are designed to meet individual tastes and needs. Accordingly, the diet is tailored to the kinds of food that are available to the individual and that he or she enjoys eating. There is no single diet for diabetes. In addition, exchange lists are available so that the individual can make on the spot alterations.<sup>29</sup> The secret of diabetes control is mastering the technique of matching insulin and food, which is why diet is so important.<sup>30</sup> Self-monitoring enables the

individual to tell almost immediately whether the insulin and food intake are in balance and to take the proper corrective steps if they are not. An individually tailored diet can achieve improved understanding and compliance which leads to better glucose concentration control.<sup>31</sup>

Self-monitoring makes it possible for a person with diabetes, who is otherwise healthy and who is motivated to devote time and attention to self-management, to maintain normal blood glucose concentrations.<sup>32</sup> Any unanticipated change in diet, exercise, or stress can be immediately compensated for by an increase in insulin or glucose depending on the circumstances. Thus, self-monitoring facilitates the prevention of hyperglycemia that cannot be detected by urine testing and it facilitates the prevention of hypoglycemia.<sup>33</sup> Self-monitoring is very helpful for people in whom hypoglycemia is especially to be averted.<sup>34</sup>

Self-monitoring first appeared in 1978 and was met with skepticism.<sup>35</sup> Many diabetes experts felt individuals with the disease would not measure their own glucose. This opinion has since been proven wrong. The growing use of self-monitoring has resulted in at least three international symposia on the subject and many national symposia.<sup>36</sup> Successful management of diabetes is possible with self-monitoring and careful attention to all aspects of diabetes management by a knowledgeable and motivated individual.

These recent advances in diabetes self-management provide strong support for a re-examination of existing regulations which prohibit the medical certification of interstate motor carrier operators who are insulin-requiring. The newfound ability of most insulin-requiring persons to insure consistent control over blood glucose concentrations through the conscientious use of self-monitoring is of profound assistance to aspiring truckers who have diabetes. This community of individuals has benefitted from recent advancements in blood glucose management to the same extent as individuals in other walks of life. Exigencies in diet, exercise, and work

schedule have in prior studies been cited as definitive reasons why people with diabetes should not be permitted to drive trucks and buses. This rationale no longer applies to the relatively small group of eligible individuals who, through a proven history of blood glucose control in combination with a conscientious and uniform system of self-management, can meet the stringent set of criteria proposed in the previous section of this Petition.

The ADA does not contend that all or even the majority of insulin-requiring persons who seek licenses to operate motor carriers in interstate commerce will or should qualify for certification. The demanding set of proposed criteria require that each applicant demonstrate eligibility through medical history, present-day diabetes management, safeguards relating to diet and insulin, ongoing physician check-ups, and other methods. Undoubtedly, a substantial number of applicants will be found ineligible. Nonetheless, they will benefit from the opportunity to receive an individual review of their medical qualifications.

#### *B. The Bureau's Absolute Prohibition Against the Certification of Persons Taking Insulin is Inconsistent with Federal and State Employment Discrimination Law*

The American Diabetes Association Policy on employment states that, "Any person with diabetes, whether insulin-dependent or non-insulin-dependent, should be eligible for any employment for which he or she is individually qualified." This policy implies that there should be individual consideration of each candidate for employment, avoiding blanket policies with regard to people with diabetes. The ADA's position on the employment of persons with diabetes is consistent with Title V of the Federal Rehabilitation Act, the policies of most Federal agencies, many state laws and a number of important court decisions. Much of the evolution in law and policy affecting the employment of individuals who take insulin has occurred since 1977. Accordingly, it is necessary for the Bureau to re-examine the rules on diabetes set forth at 49 CFR 391.41 and 391.43 in order to evaluate their consistency with federal and state law and policy generally.

#### *The Rehabilitation Act and the Bentivegna Case*

The Rehabilitation Act of 1973 was enacted for the purpose of increasing employment of people with

<sup>22</sup> C. Peterson, S. Forham, & R. Jones, *Self-Management: An Approach to People With Insulin-Dependent Diabetes Mellitus* 3 Diabetes Care 82, 86 (Jan.-Feb. 1980).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> M. Ellenberg, M.D., & H. Rifkin, M.D., *Diabetes Mellitus: Theory and Practice*, at 928 (1983) [hereinafter cited as *Ellenberg & Rifkin*].

<sup>26</sup> Guthrie & Guthrie, at 625.

<sup>27</sup> Ellenberg & Rifkin, at 546.

<sup>28</sup> *Id.* at 548.

<sup>29</sup> *Id.* at 547.

<sup>30</sup> D. McCulloch, R. Mitchell, J. Ambler, R. Tattersall, *Influence of Imaginative Teaching of Diet on Compliance and Metabolic Control in Insulin-Requiring Diabetes* 257 Br. J. Med. 1858, 1861 (Dec. 17, 1983).

<sup>31</sup> Mirsky & Heilman, at 121.

<sup>32</sup> C. Verdonk, *Improved Outlook for Diabetics: Recent Advances in Management* 74 Postgrad Med. 195, 200 (Nov. 1983).

<sup>33</sup> Sklyer, at 12.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* The American Diabetes Association, with the National Institutes of Health, is conducting a Consensus Development Conference on Self-Blood Glucose Monitoring in November 1986.



handicapping conditions.<sup>37</sup> The Act sets forth provisions requiring affirmative action plans for the hiring of persons with handicaps by federal agencies<sup>38</sup> and by parties contracting with the government,<sup>39</sup> and prohibiting job discrimination against individuals with handicapping conditions by federal agencies and recipients of federal financial assistance.<sup>40</sup> Section 504 of the Act addresses the question of job discrimination against individuals with diabetes in a very explicit manner:

No otherwise qualified handicapped individual in the United States, shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. 29 U.S.C. 794

The Rehabilitation Act therefore reflects the Federal government's policy of encouraging maximum participation by handicapped persons in all walks of life, particularly employment.

In the 1982 case of *Bentivegna v. United States Department of Labor*, 694 F.2d 619 (9th Cir. 1982), the United States Court of Appeals for the Ninth Circuit applied section 504 of the Rehabilitation Act to an individual with diabetes. In 1977, Phil Bentivegna had applied for a job with the City of Los Angeles to work as a building repairman. On the job application form, he fully disclosed his insulin-requiring diabetes. He was hired, pending a physical examination. When Bentivegna's urinalysis revealed a 4+ urine glucose level, his diabetes was deemed "out of control" and the city denied him employment. After a series of unsuccessful appeals, the case finally went before the Ninth Circuit in 1982.

After concluding that Mr. Bentivegna was a "handicapped person" under the Act who was otherwise qualified for the job in question,<sup>41</sup> the Court went on to examine the legality of the City's policy against hiring persons with diabetes whose blood glucose concentrations were not proven to be controlled below certain concentrations. The Court held as follows:

(1) The Rehabilitation Act . . . mandates significant accommodation for the capabilities and conditions of the handicapped. Blanket requirements must

therefore be subject to the same rigorous scrutiny as any individual decision denying employment to a handicapped person. 694 F.2d at 621 (emphasis added).

(2) The City had the burden of proving that its exclusion of the handicapped (in this case a person with diabetes) was directly connected with, and substantially promoted, business necessity and safe performance. 694 F.2d at 622 (emphasis added).

(3) Without regard to whether or not Bentivegna was in good control, the City had failed to demonstrate that the difference between controlled and uncontrolled diabetes was sufficient to warrant the discrimination in question. *Id.*

The *Bentivegna* ruling clearly established that Congress intended blanket discrimination against the "handicapped", including persons with diabetes, to be scrutinized very carefully, with the burden of justification falling on the proponent of discrimination. The ADA is not necessarily arguing that the Bureau's regulations on physical qualifications of drivers are illegal pursuant to the holding in *Bentivegna*. Nonetheless, the Bureau should at a minimum adopt standards which are consistent with the established policy of Congress and the agencies of the Federal Government. This policy strongly discourages blanket discrimination against insulin-requiring people. An updated review of the motor carrier exclusion applicable to diabetes is therefore appropriate.

#### Office of Personnel Management Policy on Diabetes

Until recently, the policy of the Federal Office of Personnel Management (OPM) on the employability of people with diabetes in hazardous positions (e.g. heavy equipment operators) excluded from eligibility all persons who took more than 25 units of insulin per day.<sup>42</sup> At the urging of the ADA, OPM reconsidered its position and determined that the 25 unit standard had "no medical basis" and "should be revised to more accurately reflect current standards of medical practice and the requirements of the Rehabilitation Act of 1973."<sup>43</sup> Concluding that the old standard was "clearly improper without consideration of the special characteristics of the individual's medical condition and the requirements of the job", OPM mandated that, with respect to hazardous positions,

There are no restrictions on placement of individuals with diabetes mellitus in these positions when current medical evidence and

work history indicate the person has been able to perform satisfactorily and without risk to him/herself or to others in a position or other life activities with physical demands and environmental factors similar to those of the position under consideration. *Id.*

The new OPM policy does not require that persons with diabetes be employed in hazardous positions without regard to their medical condition. It simply states that such decisions must be made on an individual, case-by-case basis, consistent with the Federal Rehabilitation Act (as well as the employment policy of the ADA). OPM's recognition that blanket discrimination against persons with diabetes is legally and medically unsupportable provides yet another reason why review of the Bureau's discriminatory regulations disqualifying all insulin-requiring individuals from driving commercial motor vehicles in interstate commerce is necessary and appropriate.

#### State Cases Prohibiting Job Discrimination Against Persons With Diabetes

In recent state cases, employees with diabetes have invoked state anti-discrimination law to combat blanket job restrictions applicable to persons with diabetes.

In *Smith v. Department of Motor Vehicles*,<sup>44</sup> the California Court of Appeals held that a Department of Motor Vehicles ("DMV") rule disqualifying all insulin-requiring persons from eligibility for truck and bus driver's licenses violated California statutory law. The case involved the firing of an insulin-requiring truck driver who had been driving for twenty years. The state rules in question had been adopted verbatim from the Department of Transportation regulations which are the subject of this petition for rulemaking.<sup>45</sup> The Smith court rejected the DMV's reliance on the fact that the Federal regulations without exception disqualified all insulin-requiring persons from the operation of buses and trucks. Under applicable statutory law, the DMV was required to grant exceptions "where driver ability can be determined by driving examination and the DMV finds that the applicant has compensated for the defect".<sup>46</sup>

A recent case in Michigan<sup>47</sup> also invalidated a *per se* exclusion for all

<sup>37</sup> *Consolidated Rail Corp. v. Darrone, Pa.*, 104 S.Ct. 1248, 79 L.Ed.2d 568 (1984).

<sup>38</sup> Rehabilitation Act of 1973, section 501, 29 U.S.C. 791.

<sup>39</sup> *Ibid.* at section 503, 29 U.S.C. 793.

<sup>40</sup> *Ibid.* at section 504, 29 U.S.C. 794.

<sup>41</sup> 694 F.2d at 621.

<sup>42</sup> Federal Personnel Management (FPM) Supplement 339-331, subchapter 1-3(c)(1).

<sup>43</sup> FPM letter 339-17, June 21, 1985.

<sup>44</sup> 163 Cal. App. 3d 321, 209 Cal. Rptr. 283 (1984).

<sup>45</sup> *Id.*

<sup>46</sup> 163 Cal. App. 3d 321.

<sup>47</sup> See, *Hines v. Grand Truck Western Railroad Company*, No. 75351, Court of Appeals, Michigan, April 1985.



insulin-requiring persons with diabetes. Frederick Hines, Jr., a three-year employee of the railroad, was on the verge of becoming an engineer when he was summarily discharged after being diagnosed as insulin-requiring. Invoking Michigan anti-discrimination law, Hines filed suit. After proving at trial that he was in excellent control of his blood glucose concentration, Hines argued that the railroad had failed to reasonably accommodate his diabetes. In April of 1985, the Michigan Court of Appeals upheld the jury's \$1.4 million verdict in Hines' favor.<sup>48</sup>

#### Summary

The foregoing discussion of Federal and state statutory, administrative, and case law pertaining to job discrimination and diabetes repeats one recurrent theme. The law increasingly disfavors blanket prohibitions against the employment of persons with diabetes. Congress, federal agencies, and courts at all levels have repeatedly recognized that persons with diabetes are entitled to individual, case-by-case assessments of their physical capabilities to meet the requirements of a particular job. The Bureau of Motor Carrier Safety's regulations disqualifying all insulin-requiring persons with diabetes fail to reflect the improved status which such individuals enjoy in most sectors of American society. The time has arrived for the Bureau to review these provisions and to promulgate rules which allow for the employment of all individuals with diabetes in positions for which they individually qualify.

#### Request for Rulemaking

For all of the above reasons, the ADA hereby petitions the Director of the Bureau of Motor Carrier Safety to initiate, pursuant to 49 CFR Part 389, rulemaking proceedings for the purpose of reviewing the provisions of 49 CFR 391 which prohibit all drivers who take insulin from operating commercial motor vehicles in interstate and foreign commerce.

Respectfully submitted,  
American Diabetes Association.

Sam A. Gallo,

Chairman of the Board.

Daniel Porte, Jr.,

President.

#### Appendix B—Analysis of the Accident Risks of Allowing Insulin-Using Diabetics to Operate Commercial Motor Vehicles

*Federal Highway Administration Office of Motor Carrier Standards*

November 1987.

#### I. Summary

The Federal Highway Administration (FHWA) estimates that allowing waivers for insulin-using diabetics to operate commercial motor vehicles could result in an additional 5,400–8,600 accidents a year. The accident rate for insulin-using diabetic drivers would be 20–32 percent (5,400 to 8,600 accidents/27,000 drivers). By comparison, the accident rate for the general population of truck drivers is less than 1 percent (39,273 accidents/5,000,000 drivers = 0.8 percent).

Of the 5,400–8,600 accidents that could occur, the FHWA estimates that 2,200 accidents would be due to severe hypoglycemic reactions. The reported incidence of severe hypoglycemia varies, thus the estimate of accidents due to severe hypoglycemia may range between 300 and 6,100 accidents a year. The remaining portion of the estimated 5,400–8,600 accidents would be due to mild hypoglycemia reactions, or 3,200–6,400 accidents could occur due to mild hypoglycemic reactions.

These results reflect the FHWA's estimate of the accidents resulting from the effects of hypoglycemia caused by diabetes. The FHWA estimate of the additional accidents is based on the following specific data and assumptions:

(1) There are approximately 11 million people in the United States affected by diabetes, including nearly 1,650,000 insulin-using diabetics;

(2) There are 799,400 insulin-using diabetics over the age of 17 years, without complications, who have adequate control of their diabetes; and this group of 794,400 people constitute the population of potentially eligible diabetics who could seek to operate commercial motor vehicles in interstate or foreign commerce;

(3) There are approximately 5 million commercial motor vehicle drivers in the United States, or 3.4 percent of 148 million potential drivers (21–65 age group);

(4) A similar proportion of eligible insulin-using diabetics would seek to operate commercial motor vehicle, i.e., 3.4 percent of 799,400, or 27,000 insulin-using diabetics would likely become commercial motor vehicle drivers if the FHWA allowed waivers;

(5) Each insulin-using diabetic would have 0.508 severe hypoglycemic reactions a year, 20 percent of the reactions would occur while driving a commercial motor vehicle, and result in an accident 80 percent of the time, and

(6) Each insulin-using diabetic would have 50 mild hypoglycemic reactions a year, 20 percent of the reactions would occur while driving a commercial motor vehicle, and result in an accident less than 3 percent of the time.

#### II. Introduction

The purpose of this analysis is to estimate the risk associated with permitting insulin-using diabetics to operate commercial motor vehicles in interstate or foreign commerce. Currently, all insulin-using diabetics are prohibited from driving commercial motor vehicles in interstate or foreign commerce.

There are three serious complications associated with diabetes mellitus: proliferative retinopathy, nephropathy, and cardiovascular disease. Persons afflicted with these complications are prohibited from being medically qualified to drive in interstate or foreign commerce.

The FHWA's analysis examines the risk of accidents caused by hypoglycemia in drivers without serious complications and who exhibit good control of their blood sugar levels. Hypoglycemia is an abnormal decrease of sugar in the blood. Severe hypoglycemia incapacitates a person, requiring hospitalization or assistance to prevent coma or convulsions. Mild hypoglycemia has more subtle effects, resulting in a loss of concentration and awareness similar to the effects of fatigue.

The primary source of the data, assumptions, and methodology for the FHWA's analysis is *Risk Analysis of Certifying Insulin-Taking Diabetic Private Pilots*, by Simon Prenskey and Kim Cardosi, a Project Memorandum DOT-TSC-FA604-PM-86-35, Federal Aviation Administration, March 1986 [referred hereinafter as the *FAA Report*].

#### III. Risk Analysis

##### *The Diabetic Population*

The American Diabetes Association (ADA) estimates that there are approximately 11 million people in the United States affected by diabetes, including nearly 1,650,000 insulin-using diabetics. The ADA's estimate of the number of insulin-using diabetics is more current and slightly higher than the

<sup>48</sup> *Id.*



estimate used in the *FAA Report* (1,610,000 people). Approximately 95 percent of insulin-using diabetics are 18 years of age or older, *FAA Report*, p. 7.

Thus, the estimated adult population of insulin-using diabetics is:

$$1,650,000 \times 0.95 = 1,567,500 \text{ people.}$$

The pool of insulin-using diabetics who could operate a commercial motor vehicle consists of those diabetics who do not have diabetes related complications and who have adequate control of their disease.

#### (1) Diabetics without Complications

Two assumptions are made for estimating insulin-using diabetics without complications, *FAA Report*, p. 12:

**Assumption 1:** The probability of having any one complication (proliferative retinopathy, nephropathy, or cardiovascular disease) is independent of the probability of having the other complications.

or

**Assumption 2:** All diabetics with nephropathy will also have cardiovascular disease and proliferation retinopathy. There is no association between cardiovascular disease and proliferative retinopathy for diabetics who do not have nephropathy.

In order to estimate the number of insulin-using diabetics without complications, the FHWA uses the factors for the FAA's two assumptions and applies the average of the factors from the *FAA Report* to the FHWA's estimate of adult insulin-using diabetics (1,567,500 people):

	Number of diabetics without complications <sup>1</sup>	Percentage of diabetics without complications <sup>2</sup>
Assumption 1	954,600	60.9
Assumption 2	1,175,600	75.0
Average	1,065,900	68.0

<sup>1</sup> The FHWA's estimated population of adult insulin-using diabetics is 1,567,500.

<sup>2</sup> *FAA Report*, p. 12.

The FHWA estimates there are 1,065,900 insulin-using diabetics without complications associated with diabetes that would otherwise disqualify them to operate a commercial motor vehicle.

#### (2) Diabetics with Adequate Control of their Disease

Approximately 75 percent of insulin-using diabetics have a relatively low incidence of hyperglycemia and have adequate control of their disease, *FAA Report* p.13. Therefore,

$$1,065,900 \times 0.75 = 799,400 \text{ insulin-using diabetics with adequate control.}$$

#### Insulin-using Diabetics who would seek to Drive

There are approximately 5,000,000 interstate or foreign commercial motor vehicle drivers in the United States out of a total eligible population of 148,195,000 (21-65 age group). Assuming that the same percentage of eligible diabetics would seek to drive, then:

$$5,000,000 / 148,195,000 = 3.37 \text{ percent, and}$$

$$799,400 \text{ eligible diabetics} \times 0.0337 = 27,000 \text{ insulin-using drivers.}$$

The FHWA estimates that 27,000 insulin-using diabetics would likely operate commercial motor vehicles if the FHWA allowed waivers.

#### Accidents due to Hypoglycemia

As noted at the outset, this analysis examines the risk of accidents caused by hypoglycemia in drivers without serious complications and who exhibit adequate control of their blood sugar levels. Hypoglycemia is an abnormal decrease of sugar in the blood. Severe hypoglycemia incapacitates a person, requiring hospitalization or assistance to prevent coma or convulsions. Mild hypoglycemia has more subtle effects, resulting in a loss of concentration and awareness similar to the affects of fatigue. The FHWA will determine the expected number of accidents due to hypoglycemic reactions by calculating product of the expected number of reactions while driving, times the probability of an accident, times the number of insulin-using drivers.

##### (1) Accidents due to Severe Hypoglycemia

The *FAA Report* estimates the incidence of hypoglycemia among insulin-using diabetics based on the average incidence reported in five studies, *FAA Report*, p.15. The FHWA uses this approach, but eliminates one of the studies in the *FAA Report* (Vignati, 1985) because it is based on an unpublished, professional observation. The FHWA also included the results of a report (Hiss, 1986) published since the *FAA Report* was prepared.

Estimates of the incidence of severe hypoglycemia range from 80 per 1,000 patient years to 1,410 per 1,000 patient years; (Basdevant, 1982; Casperie, 1985; Goldewicht, 1983; Hiss, 1986; Potter, 1982). Based on the average incidence reported in these studies, the FHWA estimates that the incidence of severe hypoglycemia is 508 per 1,000 patient years, i.e., an insulin-using diabetic experiences 0.508 severe hypoglycemic reactions per year (see Table 1).

The FHWA estimates that a truck or bus driver drives approximately 1,760 hours per year (33.9 hours per week), or

approximately 20 percent of his or her time driving each year. Thus, an insulin-using diabetic would likely experience 0.102 severe hypoglycemic reactions per year while driving a commercial motor vehicle:

$$0.508 \times 0.201 = 0.102 \text{ reactions per driver per year while driving.}$$

Or, each year approximately 10 percent of insulin-using diabetics would likely experience a severe hypoglycemic reaction while driving a commercial motor vehicle.

The *FAA Report* assumes that a severe hypoglycemic reaction will result in an accident 80 percent of the time, *FAA Report*, p.16. Thus,

$$0.102 \times 0.80 = 0.082 \text{ accidents per driver per year due to severe hypoglycemia; and}$$

$$0.082 \times 27,000 \text{ eligible drivers} = 2,200 \text{ accidents per year due to severe hypoglycemic reactions.}$$

The FHWA estimates that 2,200 accidents could occur due to severe hypoglycemic reactions. The FHWA's estimate of accidents is based on an estimated incidence of 508 severe hypoglycemic reactions per 1,000 patient years, which is an average of the reported incidence in five recent studies. The reported incidence varies, thus the estimate of accidents due to severe hypoglycemia may range between 300 and 6,100 accidents a year.

TABLE 1

Source	Reactions per year	FHWA estimates	
		Reactions per year while driving <sup>1</sup>	Number of accidents <sup>2</sup>
Casperie (1985).....	0.080	0.016	300
Potter (1982).....	0.219	0.044	1,000
Basdevant (1982).....	0.333	0.067	1,400
Goldewicht (1983).....	0.500	0.101	2,200
Hiss (1986).....	1,410	0.283	6,100
Average (FHWA).....	0.508	0.102	2,200

<sup>1</sup> 20 percent of reactions per year.

<sup>2</sup> Based on 27,000 insulin-using diabetic drivers, and 80 percent probability of an accident per reaction while driving.

(2) Accidents due to Mild Hypoglycemic Reactions. The *FAA Report* estimates that an insulin-using diabetic experiences approximately 50 mild hypoglycemic reactions per year, the *FAA Report*, p.15. Thus an insulin-using diabetic would likely experience 10.05 mild hypoglycemic reactions per year while driving a commercial motor vehicle:

$$50.0 \times 0.201 = 10.05 \text{ reactions per driver per year while driving.}$$

There is no quantitative information available to estimate the probability that a mild hypoglycemic reaction will result in an accident, *FAA Report*, p.18.



The FHWA believes the effects of a mild hypoglycemic reaction and fatigue are similar. As information is available on fatigue and its relationship with accidents, the FHWA uses the results of research on fatigue in order to identify a range of probabilities that a mild hypoglycemic reaction will result in an accident and estimating the number of accidents.

Hours of driving time is typically used as an indicator of fatigue (Eicher, 1982; Harris, 1972; Ryder, 1981). Intuitively, (1) the longer a person drives, the more fatigued he or she will become and (2) the more fatigued the driver is, the greater the probability of an accident (Harris, p.80). Based on an extensive analysis of the driver and accident records of a major common carrier, a private carrier and a bus company, one study found that the likelihood of an accident increases significantly after 8 hours of driving and, more specifically, the likelihood of an accident after 10 hours of driving is 2½ times greater than after 1 hour of driving (Harris, pp. 77-87). The 1985 accident rate for all drivers of interstate commercial motor vehicles is less than 1 percent (39,273 accidents/5,000,000 drivers = 0.785 percent). Based on these results, the FHWA calculates the number of accidents due to a mild hypoglycemic reaction for a range of probabilities, assuming that an insulin-using diabetic would be between 1½ and 3 times as likely to have an accident if he or she has a reaction while driving commercial motor vehicle.

TABLE 2

Reactions per year while driving	Accident probability	Number of drivers	Number of accidents
10,050	<sup>1</sup> 0.01178	27,000	3,200
10,050	<sup>2</sup> 0.01570	27,000	4,300
10,050	<sup>3</sup> 0.01962	27,000	5,300
10,050	<sup>4</sup> 0.02355	27,000	6,400

<sup>1</sup>1.5x0.00785 = 0.01178.

<sup>2</sup>2.0x0.00785 = 0.01570.

<sup>3</sup>2.5x0.00785 = 0.01962.

<sup>4</sup>3.0x0.00785 = 0.02355.

The FHWA estimates that 3,200-6,400 accidents could occur due to mild hypoglycemic reactions.

#### IV. Conclusion

The FHWA estimates that allowing waivers for insulin-using diabetics could result in an additional 5,400-8,600 accidents per year. The expected number of accidents is calculated as the expected number of hypoglycemic reactions while driving, times the

probability of an accident, times the number of insulin-using drivers.

Of the 5,400-8,600 accidents that could occur, the FHWA estimates that 2,200 accidents would be due to severe hypoglycemic reactions. The report incidence of severe hypoglycemia varies, thus the estimate of accidents due to severe hypoglycemia may range between 300 and 6,100 accidents a year. The remaining portion of the estimated 5,400-8,600 accidents would be due to mild hypoglycemic reactions, or 3,200-6,400 accidents could occur due to mild hypoglycemic reactions.

Insulin-using diabetics would have an accident rate of 20-32 percent (5,400 to 8,600 accidents/27,000 drivers). That is, 25-32 percent of insulin-using diabetic drivers could have an accident each year as result of a hypoglycemic reaction. By comparison, the 1985 accident rate for all drivers of interstate commercial motor vehicles was less than 1 percent (39,273 accidents/5,000,000 drivers = 0.785 percent).

#### Sources

American Diabetes Association. *Standards for Person with Diabetes Requiring Insulin, Petition for Rulemaking of American Diabetes Association*. October 1986.

A. Basdevant, et al. "The Risk of Diabetic Control: A Comparison of Hospital Versus General Practice Supervision." *Diabetologia*, 1982, V. 22, pp. 309-14.

A.F. Casperie and L.D. Elving. "Severe Hypoglycemia in Diabetic Patients: Frequency, Causes, Prevention." *Diabetes Care*, March-April 1985, V. 8, No. 2 pp. 141-45.

Federal Aviation Administration. *Risk Analysis of Certifying Insulin-Taking Diabetic Private Pilots*. Simon Premsky and Kim Cardosi, a Project Memorandum DOT-TSC-FA604-PM-86-35. March 1986

Federal Highway Administration. *A Study of the Relationships Among Fatigue, Hours of Service, and Safety of Operations of Truck and Bus Drivers*. William Harris, et al., Report No. BMCS-RD-71-2. November 1972.

C. Goldewicht, et al. "Hypoglycemic Reactions in 172 Type I (Insulin-dependent) Diabetic Patients." *Diabetologia*, 1983, V. 24, pp. 95-99.

R.G. Hiss, ed. *Diabetes in Communities*. Michigan Diabetes Research and Training Center, and the University of Michigan Medical School. 1986.

National Highway Traffic Safety Administration. *Large-Truck Accident Causation*. John Eicher, et al., NHTSA Technical Report No. DOT-HS-806-300. July 1982.

National Highway Traffic Safety Administration. *The Effects of Fatigue and Alcohol on Highway Safety*. Joan Ryder, et al., Report No. DOT-HS-805-854. March 1981.

J. Potter, et al. "Insulin-induced Hypoglycemia in an Accident and Emergency Department: the Tip of the Iceberg?" *British Medical Journal*, October 23, 1982, V. 285, pp. 1180-82.

[FR Doc. 87-27122 Filed 11-24-87; 8:45 am]

BILLING CODE 4910-22-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 672 and 675

#### Groundfish of the Gulf of Alaska; Groundfish of Bering Sea and Aleutian Islands Area

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of an amendment to a fishery management plan and request for comments.

**SUMMARY:** NOAA issues this notice that the North Pacific Fishery Management Council (Council) has submitted Amendment 16 to the Fishery Management Plan for Groundfish of the Gulf of Alaska and Amendment 11a to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area for Secretarial review and is requesting comments from the public. Copies of the amendments may be obtained from the address below.

**DATE:** Comments on the plan amendments should be submitted on or before January 16, 1988.

**ADDRESS:** All comments should be sent to Robert McVey, Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, AK 99802. Copies of the amendments, the EA, and the RIR/IRFA are available upon request from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

**FOR FURTHER INFORMATION CONTACT:** Ronald J. Berg (Fishery Biologist, NMFS, Alaska Region), 907-586-7230.

**SUPPLEMENTARY INFORMATION:** These amendments were prepared under provisions of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). The Act requires that each regional fishery management Council submit any fishery management plan (FMP) or FMP amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act also requires that the Secretary, upon reviewing the plan or amendment, must immediately publish a notice that the plan or amendment is available for



public review and comment. The Secretary will consider the public comments in determining whether to approve the plan or amendment.

Amendment 16 proposes the following changes to the FMP for Groundfish of the Gulf of Alaska: (1) Revise the definition of prohibited species; (2) update the FMP's descriptive sections, reorganize chapters, and incorporate Council policy as directed; and (3) augment the current catcher/processor reporting requirements with at-sea transfer information.

Amendment 11a proposes the following change to the FMP for Groundfish of the Bering Sea and Aleutian Islands Area: augment the current catcher/processor reporting requirements with at-sea transfer information. This modification to catcher/processor reporting requirements is identical to that proposed for the FMP for Groundfish of the Gulf of Alaska.

Regulations proposed by the North Pacific Fishery Management Council that are based on these amendments are scheduled to be published within 15 days.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: November 19, 1987.

Ann D. Terbush,

Operations Coordinator, Office of Fisheries  
Conservation, National Marine Fisheries  
Service.

[FR Doc. 87-27108 Filed 11-20-87; 11:48 am]

BILLING CODE 3510-22-M



# Notices

Federal Register

Vol. 52, No. 227

Wednesday, November 25, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

November 20, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

### Extension

• Animal and Plant Health Inspection Service  
Request for Compensation for Articles Destroyed  
PPQ-751  
On occasion  
Individuals or households; State or local governments; Farms; Businesses or other for-profit; 100 responses; 25 hours; not applicable under 3504(h)  
Eddie Elder (301) 436-6365  
Jane A. Benoit,  
Departmental Clearance Officer,  
[FR Doc. 87-27113 Filed 11-24-87; 8:45 am]  
BILLING CODE 3410-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Permit; Pacific Coast Groundfish Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of receipt of experimental fishing permit application and request for comments.

**SUMMARY:** This notice acknowledges receipt of an experimental fishing permit (EFP) application and announces a public comment period. The applicant proposes to conduct an experimental fishery to harvest white croaker (*Genyonemus lineatus*) by using two domestic vessels operating Canadian style pair trawls off the California coast. If granted, the EFP would allow fishing with gear which otherwise would be prohibited by Federal regulations governing the mesh size of trawls. The application was discussed at the Pacific Council meeting in Portland, Oregon on November 18-19, 1987.

**DATE:** Comments on this EFP application must be received by November 30, 1987.

**ADDRESS:** Send comments to E.C. Fullerton, Regional Director, NMFS, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

#### FOR FURTHER INFORMATION CONTACT:

Rodney R. McInnis, Chief, Fisheries Management Division, NMFS, Southwest Region, (213) 514-6202.

**SUPPLEMENTARY INFORMATION:** The Pacific Coast Groundfish Fishery Management Plan (FMP) provides the

basis for regulating foreign and domestic groundfish fisheries in the exclusive economic zone off the coasts of Washington, Oregon, and California. Regulations implementing the FMP became effective on September 30, 1982, (47 FR 43974, October 5, 1982). The regulations specify at 50 CFR 663.10 that EFPs may be issued to authorize fishing by U.S. vessels which otherwise would be prohibited. Procedures for application and issuance of EFPs are given in the regulations at 50 CFR 663.10 (b) and (c).

An EFP application to harvest white croaker with Canadian style pair trawl gear was received by the NMFS, Southwest Regional Office on November 2, 1987. The white croaker is not managed under the FMP, however, up to 1,000 pounds per trip of groundfish species subject to management under the FMP might be included in the incidental catch. The application requests authority for two vessels to use a codend two to three inch mesh size to harvest white croaker and incidental groundfish species. Current groundfish regulations prohibit use of mesh size smaller than three inches in pelagic trawls in the area off central California where the applicant proposes to conduct experimental fishing (50 CFR 663.26 (a) and (b)). If granted, the EFP would suspend the mesh size restriction for the time, area, and vessels specified while harvesting white croaker.

The applicant currently has a State of California permit to conduct pair trawling for white croaker within state waters. The Federal permit will complement the state permit. The applicant had a Federal permit to test trawl gear in 1986, which resulted in the reduction of the incidental take of marine mammals and birds. The EFP is summarized as follows:

1. *Purpose and goal.* The purpose of the experiment is to attempt to improve the method of harvesting the target species by developing a more economical and efficient catching method and possibly alleviating a problem caused by the gill nets presently in use. The experiment also would provide biological and fishing data from areas where they were otherwise unavailable or incomplete.

2. *Significance.* The white croaker resource currently is not under the management regime of the FMP and is not presently overharvested. The



greatest significance of this experiment lies in the gear technology involved. White croaker presently are harvested by gill nets, a gear which has proved controversial in the area of concern due to the incidental capture of marine mammals and seabirds. Development of a more economical and efficient harvest method for white croaker could alleviate problems caused by the use of gill nets with a minimal affect upon the groundfish proposed in the projected incidental catch. The impacts of the experiment could extend beyond the interests of the EFP applicant.

3. *Vessels.* Two domestic vessels would be involved in the fishery. The first vessel is 50 feet long and the second vessel is 45 feet long.

4. *Species and amount.* In addition to unspecified amounts of white croaker, up to a total of 1,000 pounds per trip of all incidentally caught groundfish species captured during experimental fishing are requested to be retained.

5. *Time, place, and gear.* The applicant proposes to fish under the EFP in an area of the Pacific Ocean from Point Reyes to Franklin Point, California at unspecified times for one year from December 1, 1987 to December 1, 1988, with Canadian style pair trawl gear using two to three inch mesh size codend.

(16 U.S.C. 1801 *et seq.*)

Dated: November 19, 1987.

Ann D. Terbush,  
Operations Coordinator, Office of Fisheries  
Conservation and Management, National  
Marine Fisheries Service.

[FR Doc. 87-27091 Filed 11-20-87; 8:45 am]

BILLING CODE 3510-22-M

#### Marine Mammals; Application for Permit; New England Aquarium (P46A)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* New England Aquarium, Central Wharf, Boston, Massachusetts 02110.

2. *Type of Permit:* Public Display.

3. *Name and Number of Marine Mammals:* Atlantic bottlenose dolphin (*Tursiops truncatus*) 6.

4. *Type of Take:* Capture/maintain.

5. *Location of Activity:* West Coast of Florida.

6. *Period of Activity:* 3 Years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above

described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm 805, Washington, DC;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Date: November 19, 1987.

[FR Doc. 87-27109 Filed 11-24-87; 8:45 am]

BILLING CODE 3510-22-M

#### Marine Mammals; Application for Permit; Washington Department of Wildlife (P250B)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* Washington Department of Wildlife, Marine Mammal Investigations, 7801 Phillips Road, SW., Tacoma, Washington 98498.

2. *Type of Permit:* Scientific Research.

3. *Name of Marine Mammals:* Harbor seal (*Phoca vitulina*) California sea lion (*Zalophus californianus*) Northern sea lion (*Eumetopias jubatus*).

4. *Type of take:* An unspecified number of pinniped specimens will be taken from commercial fishermen killed incidentally during commercial fishing operation.

5. *Location of Activity:* Washington, Oregon, and British Columbia Waters.

6. *Period of Activity:* 5 Years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service. Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE, BIN C15700, Building 1, Seattle, Washington 98115-0070.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Date: November 18, 1987

[FR Doc. 87-27110 Filed 11-24-87; 8:45 am]

BILLING CODE 3510-22-M



**[Modification No. 1 to Permit No. 465]****Marine Mammals; Modification of Permit; Southwest Fisheries Center (P77#10)**

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 465 issued to the Southwest Fisheries Center, P.O. Box 271, La Jolla, California 92038, on April 23, 1984, (49 FR 19098) is modified in the following manner:

Section B.5 is replaced by:

"5. This Permit is valid with respect to the importation authorized herein until December 31, 1989."

This modification becomes effective November 17, 1987.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: November 17, 1987.

Nancy Foster,

*Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 87-27111 Filed 11-24-87; 8:45 am]

BILLING CODE 3510-22-M

**National Technical Information Service****Intent To Grant Exclusive Patent License; Iowa State University Research Foundation**

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to the Iowa State University Research Foundation in Ames, Iowa, an exclusive right to practice the invention embodied in U.S. Patent Application S.N. 6-905,297, "Recombinant Brucella Abortus Gene Expressing Immunogenic Protein" under the Government's one-half undivided interest in the invention. The patent rights in this invention have been jointly assigned to the United States of America and the Iowa State University Research Foundation.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license

may be granted unless, within sixty days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Douglas J. Campion, Associate Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

*Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.*

[FR Doc. 87-27076 Filed 11-24-87; 8:45 am]

BILLING CODE 3510-04-M

**Intent to Grant Exclusive Patent License; Molecular Vaccines, Inc.**

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Molecular Vaccines, Inc. of New York, NY 10001, an exclusive right in the United States to practice the inventions embodied in U.S. Patent Applications S.N. 6-763,218, "Method of Producing Improved Immune Response" and S.N. 7-019,000, "Improved Malarial Immunogen." The patent rights in these inventions have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

*Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.*

[FR Doc. 87-27204 Filed 11-24-87; 8:45 am]

BILLING CODE 3510-04-M

**Intent To Grant Exclusive Patent License; XOMA Corp.**

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to XOMA Corporation of Berkeley, CA 94710, an exclusive right in the United States and

certain foreign countries to practice the inventions embodied in U.S. Patent Application S.N. 7-066,989, "Novel IL-2 Receptor and Applications Thereof." The patent rights in these invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

*Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.*

[FR Doc. 87-27205 11-24-87; 8:45 am]

BILLING CODE 3510-04-M

**COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS****Adjustment of Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Socialist Federal Republic of Yugoslavia**

November 20, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 27, 1987. For further information contact Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

**Summary**

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the current limit for man-made fiber textile products in Category 666,



produced or manufactured in Yugoslavia. As a result, the limit for Category 666, which is currently filled, will re-open.

### Background

On December 30, 1986 a notice was published in the **Federal Register** (51 FR 47052), which announced import restraint limits for certain cotton, wool and man-made fiber textile products, including Category 666, produced or manufactured in the Socialist Federal Republic of Yugoslavia and exported during the fourteen-month period which began on November 1, 1986 and extends through December 31, 1987. Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 26 and 27, 1978, as amended and extended, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia, the limit for Category 666 is being increased for carryforward.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1984 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

William J. Dulka,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*  
November 20, 1987.

### COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Commissioner of Customs,  
Department of the Treasury, Washington,  
D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 23, 1986 by the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Socialist Federal Republic of Yugoslavia and exported during the period which began on November 1, 1986 and extends through December 31, 1987.

Effective on November 27, 1987, the directive of December 23, 1986 is hereby amended to adjust the previously established restraint limit for man-made fiber textile products in Category 666 to a level of 2,349,667 pounds,<sup>1</sup> as provided under the terms of the bilateral agreement of October 26 and 27, 1978, as amended and extended.<sup>2</sup>

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William J. Dulka,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-27178 Filed 11-24-87; 8:45 am]

BILLING CODE 3510-DR-M

### DEPARTMENT OF ENERGY

#### Office of Fossil Energy; Committee on Establishing a Petroleum Research Institute; National Petroleum Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

**Name:** Committee on Establishing a Petroleum Research Institute of the National Petroleum Council.

**Date and time:** Thursday, December 17, 1987, 12:00 Noon.

**Place:** Hyatt Regency Hotel—East Tower, Concorde Room, Dallas-Fort Worth Int'l Airport, Fort Worth Airport, Texas.

**Contact:** Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695.

**Purpose of the parent council:** To provide advice, information and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

**Purpose of the meeting:** To conduct further discussions on the study's scope, organization, and timetable.

**Tentative agenda:**

- Conduct further discussions on the study's scope, organization, and timetable
- Review ongoing research efforts and the possible role of a petroleum research institute

<sup>1</sup> The limit has not been adjusted to account for any imports exported after October 31, 1986.

<sup>2</sup> The agreement provides, in part, that: (1) Carryover and carryforward may not exceed 11 percent and swing may not exceed 6 percent of cotton and man-made fiber and 5 percent of wool; (2) special shift up to 10 percent may be available in Categories 340/640 and 341/641.

- Discuss future meetings of the Committee
- Discuss any other matters pertinent to the overall assignment from the Secretary of Energy

**Public participation:** The meeting is open to the public. The Chairman of the Committee on Establishing a Petroleum Research Institute is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

**Transcript:** Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on November 20, 1987.

J. Robert Franklin,

*Deputy advisory Committee Management Officer.*

[FR Doc. 87-27197 Filed 11-24-87; 8:45 am]

BILLING CODE 6450-01-M

### Federal Energy Regulatory Commission

#### Application Filed

November 20, 1987.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

- a. **Type of Application:** Transfer of License.
- b. **Project No.:** 4627-007.
- c. **Date Filed:** November 6, 1987.
- d. **Applicants:** Albert R. and Betty F. Hunt and W.E.A. Baker Creek, Inc.
- e. **Name of Project:** Baker Creek.
- f. **Location:** On Baker Creek in Humboldt County, California.
- g. **Filed Pursuant to:** Federal Power Act, 16 U.S.C. 791(a)-825(r).
- h. **Applicant Contact:** Ms. Jane B. Kroesche, Esq., Orrick, Herrington, & Sutcliffe, 600 Montgomery Street, San Francisco, CA 94111.



i. *FERC Contact:* Mr. Don Wilt, (202) 376-9807.

j. *Comment Date:* December 18, 1987.

k. *Description of Proposed Transfer of*

*License:* Albert R. and Betty F. Hunt propose to transfer the license for Project No. 4627, which consists of a diversion dam, a penstock, a powerhouse with a total rated capacity of 1,500 kW, a transmission line, and appurtenant facilities, to W.E.A. Baker Creek, Inc. The purpose of the transfer of license is to facilitate financing for completion of the project. Transferee has proposed to construct, operate, and utilize the full output of the project in accordance with the license.

W.E.A. Baker Creek, Inc. is a corporation organized under the laws of the State of California.

1. This notice also consists of the following standard paragraphs: B and C.

#### **B. Comments, Protests, or Motions to Intervene**

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

#### **C. Filing and Service of Responsive Documents**

Any filings must bear in all capital letters the title "COMMENTS", "Notice of Intent to File Competing Application", "Competing Application", "Protest" or "Motion to Intervene", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426. An additional copy must be sent to: Mr. Edward A. Abrams Acting Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative

of the Applicant specified in the particular application.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-27162 11-24-87; 8:45 am]

BILLING CODE 6717-01-M

#### **[Docket Nos. CP88-62-000 et al.]**

#### **Arkla Energy Resources et al.; Natural Gas Certificate Filings**

Take notice that the following filings have been made with the Commission:

#### **1. Arkla Energy Resources a Division of Arkla, Inc.**

[Docket No. CP88-62-000]

November 16, 1987.

Take notice that on November 4, 1987, Arkla Energy Resources, a division of Arkla, Inc. (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP88-62-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a tap and meter station in Phillips County, Arkansas, for the delivery of natural gas to Arkansas Louisiana Gas Company, a division of Arkla, Inc. (ALG), for resale to consumers in the towns of Oneida, Wabash, and Elaine, Arkansas, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

AER proposes to install a 2-inch sales tap and associated meter, at an estimated cost of \$32,035, in order to enable ALG to initiate natural gas service to approximately 462 consumers presently using propane and electricity. It is claimed that the U.S. Department of Housing and Urban Development has classified a substantial portion of these consumers as low and moderate income families and that funds made available by a grant from the Arkansas Industrial Development Council would offset in part the cost of the facilities that ALG would be required to build to provide such service. AER states that natural gas usage would be approximately 51,810 Mcf per year or approximately 142 Mcf per average day.

Comment date: January 4, 1988, in accordance with Standard Paragraph G at the end of this notice.

#### **2. United Gas Pipe Line Company**

[Docket No. CP88-65-000]

November 17, 1987.

Take notice that on November 9, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-65-000 an application pursuant to section 7(b) of

the Natural Gas Act for permission and approval to abandon a direct industrial sale service to Louisiana Power & Light Company (LP&L) at its Ninemile Point Power Plant in Jefferson Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that LP&L is a direct industrial customer of United that purchases gas under a May 6, 1968, gas sales agreement for use as boiler fuel to generate electricity at its Ninemile Point Power Plant. It is also stated that on August 27, 1987, in accordance with the 1968 contract, United notified LP&L of a new monthly rate for gas deliverable under the 1968 contract for the period commencing January 1, 1988 and extending to January 1, 1993. United states that by letter dated September 22, 1987, LP&L declined to accept the new monthly rate. Thereafter, by letter dated October 29, 1987, United states that it informed LP&L that it did not intend to exercise its right under the 1968 contract to continue the 1968 contract in force after January 1, 1988, at the rate currently in effect and that, accordingly, with 1968 contract would terminate January 1, 1988, in accordance with its provisions.

It is stated that LP&L took no gas from United under the 1968 contract from October 1985 through November 1986. In August 1986, however, it is stated that the United States District Court for the Eastern District of Louisiana ruled that LP&L was obligated under the 1968 contract to purchase one-third of its fuel requirements for Units 1-4 at its Ninemile Point Power Plant from United. Thereafter, it is stated, LP&L commenced purchasing gas from United and has continued to do so to date. United further states that LP&L does not wish to continue purchasing gas from United after January 1, 1988, when the 1968 contract expires, on a firm basis on any terms on which United can supply the gas.

United states that LP&L pays no standby reservation or capacity demand charges. United states that it wants to render LP&L whatever pipeline services LP&L requires, however, the continuing obligation to provide firm service under the existing certificate to LP&L would undermine United's attempts to balance its gas supply with anticipated demands. United states that it is impossible for it to adjust its inventory of gas under contract with firm sales customers' demands when LP&L and customers similarly situated, although purchasing no gas, have a no-cost option to call



upon United at any time for substantial volumes on a firm basis.

United States that it is not requesting the abandonment of any facilities. It is stated that the related delivery facilities would be left in place to accommodate any possible future transportation service or new sales service.

Comment date: December 8, 1987, in accordance with Standard Paragraph F at the end of this notice.

### 3. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP88-32-000]

November 18, 1987.

Take notice that on October 19, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88-32-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for permission and approval to abandon in place 1½ (one and one-fifth) miles of the Lyons, Nebraska 2-inch Branchline, under the authorization issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The Lyons, Nebraska Town Border Station (TBS) and 2-inch Branchline was originally placed in service in 1931. Over time, the Lyons 2-inch Branchline has gradually deteriorated causing pitting, corrosion, and leaks on the line. Northern has determined that the Lyons 4-inch Branchline can more adequately serve the current and future needs of the TBS. As a result, Northern proposes to abandon in place approximately 1½ (one and one-fifth) mile of the Lyons 2-inch Branchline.

Comment date: January 4, 1988, in accordance with Standard Paragraph G at the end of this notice.

### 4. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP88-31-000]

November 18, 1987.

Take notice that on October 19, 1987, as supplemented on October 29, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-31-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Paragon Gas Corporation (Paragon), a marketer, under the certificate issued in Docket No. CP87-115-000 on June 18, 1987,

pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee state that pursuant to a transportation agreement dated August 26, 1987, it proposes to transport natural gas for Paragon from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", with interconnections between Tennessee and various downstream transporters. Tennessee states that the ultimate consumers of the gas are various end users located on the pipelines or local distribution companies receiving gas from Tennessee.

Tennessee further states that the maximum daily and annual quantities would be 40,000 dekatherms and 730,000 dekatherms, respectively. Tennessee advises that service under § 284.223(a) commenced September 1, 1987, as reported in Docket No. ST88-222 (filed October 14, 1987).

Comment date: January 4, 1988, in accordance with Standard Paragraph G at the end of this notice.

### 5. United Gas Pipe Line Company

[Docket No. CP88-66-000]

November 18, 1987.

Take notice that on November 9, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, pursuant to section 7(b) of the Natural Gas Act, filed in Docket No. CP88-66-000 an application for an order authorizing abandonment of service effective January 1, 1988 to Mississippi Power and Light Company (MP&L) at its Rex Brown Power Plant, Hinds County, Mississippi, as provided under a direct sale contract which expires January 1, 1988, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that it has notified this customer, by letter, that its present firm service contract terminates January 1, 1988. United further states that the continuation of service under such conditions is neither warranted nor in the public interest and requests the Commission to authorize the termination of deliveries and the abandonment of direct sales service to the extent required.

Comment date: December 9, 1987, in accordance with Standard paragraph F at the end of this notice.

### Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment

date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be necessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-27098 Filed 11-24-87; 8:45 am]

BILLING CODE 6717-01-M



[Docket No. GP87-59-000]

**Department of Interior, Bureau of Indian Affairs, Osage Agency; Order Issuing Preliminary Finding That Jurisdictional Agency Determinations Are Not Supported by Substantial Evidence**

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.  
Issued: November 19, 1987.

On various dates from 1979 to 1984, the Department of Interior's Bureau of Indian Affairs, Osage Agency (Osage Agency), notified the Commission of thirteen well category determinations made pursuant to section 503 of the Natural Gas Policy Act of 1978 (NGPA). Absent Commission action, the notices would have become final after 45 days pursuant to § 275.202(a) of the Commission's regulations. The Commission advised the Osage Agency within 45 days of receipt of each notice that the notices were incomplete, lacking either sufficient explanation of the basis for each determination or sufficient information to complete the applications. Despite repeated requests for necessary additional information, none of the requisite information has been provided by the Osage Agency or the applicants. As a consequence, none of the determinations has become final by virtue of § 275.202(a) of the

regulations. The Appendix to this order summarizes each determination and its deficiency.

Under section 503(a)(1) of the NGPA, when a jurisdictional state or federal agency makes a determination as to whether natural gas qualifies under one of the pricing categories found in NGPA sections 102, 103, 107, or 108, the jurisdictional agency is required to provide the Commission with notice of the determination. Section 503(c)(3) allows the Commission to prescribe the form and content of filings made with jurisdictional agencies in connection with the determinations. Section 503(b) provides that the Commission shall reverse any jurisdictional agency determination if the Commission finds that the determination is not supported by the substantial evidence in the record upon which the determination was made.

The Commission has established filing requirements for applications for well category determinations in Subpart B of Part 274 of its regulations. These regulations specify for each type of determination the minimum information an applicant must file with a jurisdictional agency to support an affirmative determination. Section 274.104 sets forth the requirements for notices of well category determinations made by jurisdictional agencies. Such notices must include a copy of the

application, all information required by § 274.201-208 of the Commission's regulations to be filed with the jurisdictional agency, and an explanatory statement which is sufficient to enable a person examining the notice to ascertain the basis for the determination without reference to information or data not contained in the notice.

The Commission's procedures for reviewing a notice of determination are set forth in Part 275. Under § 275.202(a), the Commission may, before any determination becomes final, make a preliminary finding that the determination is not supported by substantial evidence in the record. Any state or federal agency or any person may, within 30 days after issuance of notice of a preliminary finding, submit written comments and may request an informal conference with the Commission. A final Commission order must be issued within 120 days after issuance of the preliminary finding.

Based on the foregoing facts and circumstances, the Commission hereby makes a preliminary finding that the subject determinations submitted by the Osage Agency are not supported by substantial evidence in the record upon which the determinations were made.

By the Commission.  
**Lois D. Cashell,**  
*Acting Secretary.*

## APPENDIX

Applicant	Well name	NGPA section	FERC No.	Initial FERC letter	Deficiency in Record
Greenwood Oil Company	#2-B Phillips	103	JD79-15371	9-20-79	No location plat and incomplete oath.
Ajax Oil & Gas Corp., Inc.	Osage Well #409	108	JD80-31170	6-16-80	Record shows well not connected to pipeline during qualifying period.
Doyle Williams	Well 11-20 NE 20-25-12	108	JD81-32113	7-1-81	Record shows well off production during qualifying period.
Brady Brothers	Osage-Culver #12A	103	JD81-48581	10-19-81	No completion report giving initial drilling date.
Brooks Oil Company	Well #3	108	JD83-16436	2-17-83	Production records show over stripper well limits during qualifying period.
Lyle Seidel	White #1A	108	JD83-40909	7-22-83	Well shut in during qualifying period.
Lyle Seidel	Stith #1B	108	JD83-40910	7-22-83	Well shut in during qualifying period.
Lyle Seidel	Stith #5	108	JD83-40911	7-22-83	Well shut in during qualifying period.
Lyle Seidel	Stith #6	108	JD83-40912	7-22-83	Well shut in during qualifying period.
Lyle Seidel	Stith #6A	108	JD83-40913	7-22-83	Well shut in during qualifying period.
R.D.T. Properties	Sperry	103	JD83-48859	9-22-83	No completion report giving initial drilling date.
Rouget Oil and Gas Corp.	Bratton #7	103	JD83-48865	9-22-83	No completion report giving initial drilling date.
Class Petroleum Corp.	Tate #19	108	JD84-40928	8-20-84	Too much oil production shown.

[ER Doc. 87-27103 Filed 11-24-87; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. QF88-78-000]

**Babcock & Wilcox Company, Inc.; Application for Commission Certification of Qualifying Status of Cogeneration Facility**

November 18, 1987.

On November 6, 1987, Babcock & Wilcox Company, Inc. (Applicant), of 20

S. Van Buren Avenue, Barberton, Ohio 44203, submitted for filing an application for certification of a facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Oahu, Hawaii. The facility will consist of a pulverized coal boiler and an extraction/condensing steam turbine generator. Steam produced by the facility will be

sold to Diamond Head Ice Company for use in the absorption refrigerating equipment to provide refrigeration to its ice making facility. The net electric power production capacity of the facility will be 131.4 MW. The primary energy source will be bituminous coal. Installation of the facility will begin in January, 1989.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy



Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 87-27163 Filed 11-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF88-62-000]

**Energy Technology Engineering Center, Rockwell International Corp.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility**

November 18, 1987.

On October 29, 1987, the Energy Technology Engineering Center (ETEC), Rockwell International Corporation (Applicant), Post Office Box 1449, Canoga Park, California 91304, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located at the ETEC Test Facility, Woolsey Canyon Road, in Ventura County, California. The facility will consist of a waste heat recovery steam generator and a condensing steam turbine generator. Applicant states that the primary energy source of the facility will be "waste" in the form of heat contained in the flue gas of an existing furnace. The maximum net electric power production capacity of the facility will be 6.0 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the

applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 87-27164 Filed 11-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI 88-94-000]

**Amoco Production Co.; Application**

November 20, 1987.

Take notice that on November 5, 1987, Amoco Production Company (Amoco), filed an application pursuant to section 7 of the Natural Gas Act (NGA), 15 U.S.C. 717f, and Part 157 of the Federal Energy Regulatory Commission's Regulations thereunder (18 CFR Part 157), for a Limited-Term Blanket Certificate of Public Convenience and Necessity with Pregranted Abandonment Authorization for the sale of its contractually uncommitted NGA gas producible from Vermilion Block 46, Offshore Louisiana, and for any other contractually uncommitted NGA gas that becomes available.

Amoco submits that Vermilion Block 46, Offshore Louisiana, is shut in due to the lack of a long-term market and that it needs the requested authorization to make spot sales of such gas in interstate commerce. Furthermore, Amoco may have other supplies of contractually uncommitted NGA gas for which Natural Gas Act section 7 certificate authority will be required prior to deliveries being commenced in interstate commerce. Amoco states that it is suffering an economic hardship by not producing and marketing these supplies. Also, it is possible that in some cases Amoco could suffer drainage, reservoir damage and lease maintenance difficulties.

Amoco states that the Commission will issue a certificate authorizing the sale of natural gas for resale if it finds that the proposed sale is required by the public convenience and necessity. Here, the precondition is met, according to Amoco, because Amoco is finding it difficult to market its contractually uncommitted NGA gas as purchasers will not enter into long-term gas sales contracts when gas is available on the spot market at relatively low prices. The proposed authorization will also benefit the over-all market, and specifically the natural gas consumer, by providing a

new source of readily available, market responsive priced, natural gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 7, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will not be necessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 87-27165 Filed 11-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-1-001]

**Bayou Interstate Pipeline System; Proposed Changes in FERC Gas Tariff**

November 18, 1987.

Take notice that on November 13, 1987 in compliance with Ordering paragraph (C)(1) of the Federal Energy Regulatory Commission's (Commission) order issued October 29, 1987, in Docket No. RP88-1-000, Bayou Interstate Pipeline System (Bayou) tendered for filing as part of the its FERC Gas Tariff, Original Volume No. 1, tariff sheets which would restate the effective date of its currently effective base tariff rates. Concurrently with this filing, Bayou also filed a Request for Rehearing and Stay of Ordering paragraph (C)(2).

Bayou stated that the cost and revenue study ordered by the Commission in Ordering paragraph (C)(1) demonstrated a cost underrecovery based on data for the twelve month period ended October 31, 1987.

Copies of this filing have been served upon Bayou's jurisdictional customer, the Louisiana Public Service Commission and the Department of Natural Resources Office of Conservation of the State of Louisiana.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825



North Capitol Street, NE., Washington, DC 20426, in accordance with 18. CFR 385.211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before November 25, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
*Acting Secretary.*

[FR Doc. 87-27106 Filed 11-24-87; 3:45 am]  
BILLING CODE 6717-01-M

[Docket No. TA88-2-32-000]

**Colorado Interstate Gas Co.; Proposed Change in FERC Gas Tariff**

November 20, 1987.

Take notice that on November 16, 1987, pursuant to section 24 of its FERC Gas Tariff, Original Volume No. 1 and section 15 of its FERC Gas Tariff, First Revised Volume No. 1-A, Colorado Interstate Gas Company ("CIG") filed Thirty-Third Revised Sheet Nos. 7 and 8, and First Revised Sheet No. 4, reflecting the 15.1 mills per Mcf Gas Research Institute ("GRI") charge authorized by Commission Opinion No. 283 issued on September 29, 1987, in Docket No. RP87-71-000. CIG requested that the proposed tariff sheets be made effective on January 1, 1988. Pursuant to Paragraph 24 of CIG's FERC Gas Tariff, Original Volume No. 1 and Paragraph 15 of CIG's FERC Gas Tariff, First Revised Volume No. 1-A, said GRI charge applies only to CIG sales and transportation deliveries to and for distributors for resale, to pipelines which are not members of GRI, and for any parties receiving sales or transportation service from CIG who are not members of GRI.

CIG respectfully requested the Commission to grant any waivers of the Commission's Regulations as it may deem necessary to accept this filing.

Copies of the filing have been served upon CIG's jurisdictional customers and other interested public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November

27, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
*Acting Secretary.*

[FR Doc. 87-27166 Filed 11-24-87; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. RP87-70-005]

**East Tennessee Natural Gas Co.; Correction to Prior Tariff Filing**

November 20, 1987.

Take notice that on November 13, 1987, East Tennessee Natural Gas Company (East Tennessee) resubmitted Thirty-first Revised Sheet No. 4 and several supporting schedules to reflect a correction of the three-day peak figures used on Schedule 1, page 1 of 1, Revised, of East Tennessee's October 30, 1987 filing in the above-captioned docket.

East Tennessee states that copies of the corrected tariff sheet and supporting schedules have been mailed to all parties in the affected docket, all of its customers and all affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before November 27, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
*Acting Secretary.*

[FR Doc. 87-27167 Filed 11-24-87; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. RP87-139-001]

**El Paso Natural Gas Co., Tariff Filing**

November 18, 1987.

Take notice that on November 12, 1987, El Paso Natural Gas Company ("El Paso") filed, pursuant to Part 154 of the Federal Energy Regulatory

Commission's ("Commission") Regulations Under the Natural Gas Act and in compliance with Order No. 472-B issued September 16, 1987 at Docket Nos. RM87-3-002 through RM87-3-018 and the Commission's order issued September 29, 1987 at Docket No. RP87-109-000, *et al.* (Algonquin Gas Transmission Company, *et al.*), Original Sheet Nos. 366 through 374, First Revised Sheet No. 375 and Original Sheet Nos. 376 through 399 to its FERC Gas Tariff, First Revised Volume No. 1 and First Revised Sheet No. 238 to its FERC Gas Tariff, Original Volume No. 1-A.

El Paso states that on September 8, 1987, El Paso filed certain tariff sheets to add an annual charge adjustment ("ACA") provision to its FERC Gas Tariff and increase certain sales and transportation rates by \$.0020 per dth (\$.0021 per Mcf), as authorized by the Commission's Final Rule (Order No. 472), issued May 29, 1987 at Docket No. RM87-3-000. Such initial annual charge adjustment is to recoup, commencing with the Commission's fiscal year October 1, 1987, El Paso's total annual charge paid to the Commission on August 31, 1987. Thereafter, on September 16, 1987 the Commission issued Order No. 472-B which, among other things, amended § 154.38(d)(6) of the Commission's Regulations to require that the ACA-related tariff sheets include language specifying the purpose and manner of collecting the ACA, the proposed effective date of the tariff change, and an expression of the pipeline's intent not to recover any annual charges recorded in FERC Account No. 928 in a Natural Gas Act section 4 rate case.

El Paso further states that by order issued September 29, 1987 at Docket No. RP87-109-000, *et al.* (Algonquin Gas Transmission Company *et al.*), the Commission accepted, effective October 1, 1987, El Paso's ACA-related tariff filing conditioned upon El Paso refiling certain tariff sheets to include the applicability of the ACA adjustments to all of the rate schedules that are affected by Order No. 472 and reflect the revised language required by Order No. 472-B. As reflected in El Paso's September 8, 1987 ACA tariff filing, the ACA adjustment has been incorporated on the Statement of Rates tariff sheet contained in El Paso's First Revised Volume No. 1, Original Volume No. 1-A, Third Revised Volume No. 2 and Original Volume No. 2A Tariffs and is therefore applicable to all of the rate schedules that are affected by Order No. 472. Accordingly, the tendered tariff sheets revise El Paso's September 8,



1987 ACA tariff filing to incorporate the language required by Order No. 472-B.

El Paso respectfully requests waiver of all applicable Commission rules and regulations as may be necessary to permit the tendered tariff sheets to become effective on October 1, 1987, the effective date approved by the Commission's September 29, 1987 order.

El Paso states that copies of the filing have been served upon all parties of record in Docket No. RP87-139-000 and, otherwise, upon all of its interstate pipeline system customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 25, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-27116 Filed 11-24-87; 8:45]

BILLING CODE 6717-01-M

[Docket No. RP88-23-000]

### Entex, Inc., Filing of Complaint

November 20, 1987.

In the matter of Entex, Inc., Louisiana Gas Service Company, Arkansas Louisiana Gas Company, a Division of ARKLA, Inc., New Orleans Public Service Inc., Mississippi Valley Gas Company, Willmut Gas & Oil Company, Complainants, v. Northern Border Pipeline Company, Respondent.

Take notice that on November 6, 1987, a Complaint was filed against Northern Border Pipeline Company requesting the Commission to order Northern Border to adopt the modified fixed variable method of cost classification, allocation and rate design. The Complaint was filed by Entex, Inc., Louisiana Gas Service Company, Arkansas Louisiana Gas Company, New Orleans Public Service, Inc., Mississippi Valley Gas Company and Willmut Gas & Oil Company, all of whom are customers of pipelines transporting under Northern Border's T-1 firm service tariff. The complainants allege that Northern Border's current cost-of-service tariff

which guarantees recovery of all of Northern Border's costs, including return on and of equity and associated taxes, irrespective of the volumes of gas actually transported, is unjust and unreasonable and violates Commission policy. Complainants further assert that adoption of the modified fixed variable methodology as proposed in their Complaint will result in a cost savings of \$414 million to the customers and consumers served by the T-1 Rate Schedule shippers on Northern Border.

The Complaint alleges that Northern Border's current tariff distorts competition between domestic and Canadian gas, as well as competition between Northern Border and other pipelines with respect to interruptible transportation and that the tariff fails to provide revenue incentives for Northern Border to increase throughput and unfairly allocates the cost of the system between parties using the facilities and parties entitled to use them but not currently doing so.

Complainants allege that neither the legislative and executive approvals relative to Northern Border, nor relevant Commission orders, provide a basis for finding that recovery of Northern Border's return on equity should be guaranteed. It is further alleged that adoption of the MFV methodology does not violate the terms of Northern Border's loan agreements nor will it adversely affect its ability to meet its debt service obligations.

Complainants propose rates for firm (T-1) and interruptible (IT-1) transportation on Northern Border which are derived through the MFV methodology. The commodity charge of the proposed T-1 rate would recover return on equity, the amortization of the allowance for funds used during construction (AFUDC), state and federal income taxes, and the amortization of the Incentive Rate Of Return (IROR) rate base adjustment. Complainants propose alternative rates which would recover amortization of the IROR rate base adjustment through the demand charge. Complainants propose a maximum IT-1 rate, computed at a 100 percent load factor, and a minimum IT-1 rate.

Any person desiring to be heard or to protest complaint should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 21, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before December 21, 1987.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-27168 Filed 11-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP68-179-012, CP74-192-011, and CP86-704-002]

### Florida Gas Transmission Co.; Amendment

November 23, 1987.

Take notice that on October 30, 1987, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77001, filed in Docket Nos. CP68-179-012, CP74-192-011 and CP86-704-002 an amendment to its pending applications<sup>1</sup> pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) the construction and operation of facilities, (2) the partial and total abandonment of previously certificated sales and firm transportation services, (3) the abandonment of its facilities to transport and deliver all previously approved levels of services in connection with direct sales arrangements, (4) proposed FERC Gas Tariff revisions involving FGT's General Terms and Conditions Section, Rate Schedules G and I and the Index of Entitlements, (5) new levels of service for existing resale customers, (6) the use of its facilities at new levels of service for direct sales customers, (7) the implementation of a provisional transportation service as described in proposed Rate Schedule PT, and (8) the

<sup>1</sup> By its order issued January 16, 1987 (38 FERC ¶ 61,018), the Commission granted motions to consolidate the proceedings in FGT's Docket Nos. CP68-179-006, CP74-192-009, CP74-192-010, and CP86-704-000, rejected an offer of settlement in Docket No. CP68-179-006, vacated the abandonment and certificate authorization issued in FGT on September 2, 1982, in Opinion No. 44 (20 FERC ¶ 61,298) and on July 5, 1983 in Opinion No. 44-A (24 FERC ¶ 61,005), dismissed a request for a temporary certificate requested by FGT in Docket No. CP74-192-010, granted authorization to FGT to construct and operate proposed facilities (Phase I facilities) in Docket No. CP74-192-009 and set for formal hearing the remaining issues identified in the January 16, 1987 order. By Commission order issued May 4, 1987 (39 FERC ¶ 61,110), the Commission consolidated FGT proposals in Docket No. CP68-704-001 with the consolidated proceeding established for Docket Nos. CP68-179-006, CP74-192-009, CP74-192-010 and CP86-704-000.



rate base treatment for costs associated with the construction of the delivery lateral lines proposed herein, all as more fully set forth in the amendment on file with the Commission and open to public inspection.

FGT asserts that throughout the past year it has engaged in extensive negotiations in an attempt to settle the various issues set for hearing by the Commission's January 16, 1987, order in Docket No. CP86-179-006, *et al.* These negotiations have resulted in FGT's filing an Offer of Settlement and Stipulation Agreement on October 30, 1987, concurrently with the instant amendment.

By this amendment, FGT revises its request for authorization to construct and operate the various facilities which were proposed in Docket Nos. CP86-704-000 and CP86-704-001. FGT withdraws a request for authorization to construct and operate a delivery lateral which would have connected FGT's system to Florida Power and Light Company's (FPL) Martin County power plant in Martin County, Florida. Further, FGT withdraws its requests for authorization to (1) construct approximately 43 miles of 30-inch looping pipeline in three segments between compressor stations 11 through 15 and (2) construct and operate approximately 39.7 miles of 24-inch pipeline and additional compression of 24,000 hp at compressor stations 19 and 20, all of which were proposed in Docket No. CP86-704-000. FGT's amended construction proposals (Phase II facilities) include revisions to the design, location and costs of the initial proposals in Docket No. CP86-704-000. FGT now proposes to construct facilities on its mainline system which would consist of additional compression of 2,000 hp each at existing compressor stations 9, 10, 11, 13, 14, 17, 18 and 20; additional compression of 4,000 hp each at compressor stations 12, 15 and 16 and a new 5,000 hp compressor station 19 to be located in Brevard County, Florida. FGT asserts that the proposed compression facilities would increase its mainline capacity by approximately 100,000 Mcf per day and that its mainline system would have an approximate design day capacity of 925,000 Mcf per day. FGT also proposes to make certain piping modifications at compressor station 8.

FGT also modifies its proposal to construct various delivery laterals. FGT now proposes to construct 22 segments of approximately 179.7 miles of varying diameter delivery lateral additions or expansions ranging from 0.1 mile to 28.2 miles in length and approximately 625

hp of compression at proposed compression station 33 on the existing Sarasota lateral in Polk County, Florida. The proposed facilities are described in Appendix A, hereto.<sup>2</sup>

FGT estimates that the total cost of construction would be \$104,700,000, of which \$57,031,700 would be associated with the proposed mainline construction, \$46,353,300 would be associated with the proposed delivery lateral construction and \$1,315,000 would be associated with proposed construction of new or modified measuring and regulating stations. The latter costs would be directly reimbursed by those customers requesting such facilities. FGT requests that the remaining costs be treated for both accounting and rate purposes on a rolled-in basis. The treatment of costs associated with the proposed delivery laterals would require, as FGT requests, a waiver of section 14 of the General Terms and Conditions in its FERC Gas Tariff. If granted, this waiver would enable FGT to include these costs into its rate base rather than be charged directly to related customers, it is explained.

FGT's proposals in the instant amendment would rescind certain previous proposals in Docket No. CP86-704-000. It is indicated that FGT no longer proposes to implement a partial requirements resale service under Rate Schedule PS or a new firm transportation service under Rate Schedule T-5. Likewise, an FGT proposal which would have provided a reduction option to its resale customers (i.e., reduce annual volumetric entitlements by 20 percent a year for a period of five years) has also been withdrawn, it is stated.

In the instant amendment FGT makes various requests for Commission abandonment authorizations pursuant to section 7(b) of the NGA. FGT requests authorization for (1) the abandonment of its current system of entitlements and its related Index of Entitlements as now stated in its FERC Gas Tariff, (2) the abandonment of all previously certificated levels of resale service under FGT's current Rate Schedules G and I, (3) the abandonment of the use of its transmission facilities for delivering all current levels of direct sales services and (4) the abandonment of a firm transportation service on behalf of FPL under existing Rate Schedule T-3. FGT requests that the Commission make the above abandonment authorizations

effective upon the in-service date of the proposed Phase II facilities.

FGT makes numerous detailed proposals offering new services and requesting revisions to its FERC Gas Tariff. First, FGT requests Commission approval of a new entitlement system and a revised Index of Entitlement. FGT asserts the revised Index of Entitlement reflects agreements between FGT and its existing sales customers concerning new levels of sales service. Specific levels of services and entitlements proposed by FGT are shown in Appendix B hereto. FGT proposes that under the new entitlement system, a resale customer's total annual volumetric entitlement (TAVE) would be the sum of a customer's proposed maximum annual contract quantity (MACQ) under Rate Schedule G service and its proposed annual volumetric entitlement (AVE) under Rate Schedule I service. For direct sales services, the TAVE would be the sum of each direct sales customer's proposed MACQ for firm service and its proposed AVE for preferred interruptible service. FGT notes that the proposed Index of Entitlement includes new customers. Therefore, FGT requests certificate authorization under section 7(c) of the Natural Gas Act to implement natural gas service on behalf of the City of DeFuniak Springs (DeFuniak), Okaloosa County Gas District (Okaloosa) and the City of Tallahassee (Tallahassee) pursuant to FGT's Rate Schedule G and to implement natural gas service on behalf of DeFuniak, Okaloosa, City of Madison and the City of Sunrise pursuant to FGT's Rate Schedule I.

FGT currently provides resale services under existing Rate Schedules G and I. FGT proposes to restructure both services and the corresponding tariff provisions. FGT proposes the following revisions to Rate Schedule G service: (1) The availability of Rate Schedule G service would be dependent on available capacity in FGT's system in order to provide this service on a firm basis; (2) the replacement of the *Annual Contract Quantity* section in the existing Rate Schedule G with a maximum annual contract quantity (MACQ) section that would define the MACQ as the maximum annual quantity which FGT is obligated to deliver and the maximum quantity which a buyer is entitled to receive in a service year; (3) the establishment of seasonally differentiated maximum daily contract quantities (MDCQ) for the service periods of October through April and May through September, (with the definition of MDCQ being the maximum daily quantity which FGT is obligated to

<sup>2</sup> The appendices referred to in this notice are not being printed in the *Federal Register*, but are available from the Commission's Public Reference Branch.



deliver and the maximum quantity which a buyer is entitled to receive on any given day under Rate Schedule G); (4) the applicability and character of service under Rate Schedule G would incorporate FGT's proposed modifications to a new curtailment methodology which is also proposed herein; (5) a new *Authorized Over-Run Gas* section which would define the quantity of natural gas a customer may take on a daily or annual basis under Rate Schedule G without incurring penalties; and (6) a new Form of Service Agreement for Rate Schedule G which would reflect seasonally differentiated MDCQ's by delivery point and other conforming changes.

FGT proposes the following revisions to Rate Schedule I service: (1) The replacement of the existing annual contract quantity section with a new annual volumetric entitlement section which would define the AVE as the largest annual quantity of natural gas that would be delivered to a buyer under this service; (2) the applicability and character of service under Rate Schedule I would incorporate FGT's proposed modifications to a new curtailment methodology which is also proposed herein; (3) a new *Authorized Over-Run Gas* section which would define the quantity of natural gas a customer may take under Rate Schedule I on a daily or annual basis without incurring penalties; and (4) a new Form of Service Agreement for Rate Schedule I. FGT requests that authorizations for all the above proposals relating to its resale and direct sales services become effective on the in-service date of the proposed Phase II facilities.

FGT asserts that the restructuring of FGT's FERC Gas Tariff would enable FGT to offer a generally available firm transportation service pursuant to a proposed Rate Schedule FTS-1. FGT requests Commission authorization to implement Rate Schedule FTS-1 service and to approve the specific levels of service to specified shippers identified in the attached Appendix C. FGT asserts that letter agreements have been reached with each proposed shipper reflecting seasonally differentiated maximum daily transportation quantities (MDTQ) for the service periods of October through April and May through September. MDTQ would be defined as the maximum daily transportation quantities which FGT would be obligated to transport and the maximum daily transportation quantities a customer would be entitled to have transported under Rate Schedule FTS-1. In addition the letter

agreements are said to establish the maximum annual transportation quantity (MATQ) for each customer. FGT proposes, as initial rates for Rate Schedule FTS-1, to charge a reservation charge of 17.42 cents per MDTQ plus a commodity charge of 14.23 cents per actual volume transported. In addition, FGT asserts that each shipper would reimburse FGT with in-kind volumes for fuel usage based on the quantities of natural gas to be transported by FGT. FGT requests that the Commission make effective its proposals for Rate Schedule FTS-1 service on the in-service date of the proposed Phase II facilities.

As an extension of its Rate Schedule FTS-1 transportation service, FGT is proposing to make available to its resale customers a conversion option which would permit conversion of sales entitlements into transportation services under the proposed Rate Schedule FTS-1 service. Pursuant to this proposed conversion option, a Rate Schedule G customer would be given the annual option to convert up to twenty percent of its proposed MACQ and MDCQ into Rate Schedule FTS-1 service. FGT explains that an individual customer may convert in excess of twenty percent of its MACQ and MDCQ in a service year if the sum of all Rate Schedule G customers' conversions are less than 20 percent of the aggregate MACQ and MDCQ for all customers under Rate Schedule G. For Rate Schedule I customers, FGT offers an option permitting the conversion of any portion of a customer's AVE into Rate Schedule FTS-1 service, subject to the availability of capacity for firm service on FGT's system. Whenever a resale customer wishes to exercise its conversion rights, FGT states, it would request the necessary Commission authorization. FGT explains that it is requesting authorization only to include the provisions for conversion into its FERC Gas Tariff and is not now seeking authorization for the proposed conversion rights.<sup>3</sup>

Prior to the period in which FGT's proposes Rate Schedule FTS-1 service to become effective, FGT requests Commission authorization to implement a provisional transportation service pursuant to a proposed Rate Schedule PT. FGT requests abandonment authorization for Rate Schedule PT so that this service would become effective on the first day of the second month following the effective date of the settlement offer, filed concurrently with

the instant amendment, and would terminate upon the earlier of (1) two years from the effective date for Rate Schedule PT or (2) the in-service date of the proposed Phase II facilities. FGT proposes to make Rate Schedule PT available to (1) existing direct sale or resale customers who are currently included in the Index of Entitlements in its FERC Gas Tariff, (2) existing direct and resale customers whose gas sales requirements are classified in priorities 1 through 9, (3) existing direct and resale customers who have executed a letter agreement for Rate Schedule FTS-1 service on or before October 15, 1987, and who have also executed a service agreement under proposed Rate Schedule PT on or before October 15, 1987, and (4) existing direct and resale customers who would have title to the natural gas at the time the volumes are tendered to FGT for transportation. FGT proposes to charge an initial commodity rate of 34.28 cents per actual volumes transported under proposed Rate Schedule PT. The specific customers and related volumes proposed for Rate Schedule PT service are listed in Appendix D hereto. FGT asserts that the listed customers have entered into agreements for Rate Schedule PT service prior to October 15, 1987. All Rate Schedule PT service would be considered as Priority 9 end-usage for curtailment purposes.

As a replacement to FGT's existing Rate Schedule T-3 firm transportation service on behalf of FPL, FGT, as originally proposed in Docket No. CP86-704-000, requests authorization herein to implement a proposed Rate Schedule T-4 firm transportation service on behalf of FPL. FGT asserts that FPL has entered into a purchase contract with Citrus Trading Corp., an affiliate of FGT. As proposed, the Rate Schedule T-4 service would transport seasonally differentiated MDTQ's of 430 billion Btu of natural gas per day during the May through September period and 280 billion Btu of natural gas per day during the October through April period. FGT requests that the proposed Rate Schedule T-4 service be made effective on the in-service date of the proposed Phase II facilities and continue for a primary term of 15 years. At that time, FGT explains that FPL would have an option to continue such service for an additional 15 years at a MDTQ level of 280 billion Btu per day. FGT proposes as initial rates to assess FPL for Rate Schedule T-4 service a commodity charge of 18.55 cents per actual volumes transported and a demand charge of 19.97 cents per MDTQ.

<sup>3</sup> FGT notes that the contract quantities proposed herein and shown in Appendixes B and C reflect the initial conversions rights sought by its jurisdictional customers.



FGT also proposes a variety of changes to its General Terms and Conditions of its FERC Tariff. FGT proposes to revise Section 9, *Priority of Service*, in order to make such existing curtailment provisions subject to natural gas deficiencies and to add a new section 9A, *Priorities of Service-Pipeline Capacity*, in order to provide for curtailment provisions subject to capacity restraints on its system. Pursuant to proposed section 9A, FGT would first curtail interruptible service before any firm service. Curtailment between the various interruptible and firm categories would continue on an end-use basis. There would be no distinction between FGT's firm sales or firm transportation services under proposed Section 9A. Other tariff provisions under General Terms and Conditions which FGT proposes to change include (1) Section 2, *Quality*, (2) Section 16, *Schedule of Effective Minimum Annual Contract Quantity*, (3) Section 17, *Unauthorized Over-Run Provision*, (4) Section 20, *Maximum Hourly and Daily Volumes*, and (5) a new Section 23, *Creditworthiness*.

FGT states that there are no proposed rate changes for existing Rate Schedules G and I services and that the instant amendment and the settlement offer provide for an allocation of FGT's system capacity after the proposed Phase II facilities would be built. Furthermore, FGT asserts that Commission approval of the proposals in the instant amendment and the settlement offer would render FGT's application in Docket No. CP68-179-006 moot and, therefore FGT offers to withdraw said filing, it is stated.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before December 14, 1987, filed with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the

Commission's Rules. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-27169 Filed 11-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE80-36-003]

### Idaho Power Co. Notice of Application for Exemption

(November 20, 1987.)

Take notice that Idaho Power Company (IPC) filed an application on October 9, 1987 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1988 and biennially thereafter, information on the costs of providing electric service as specified in Subpart(s) B, C, D, and E of Part 290.

In its application for exemption Idaho Power Company states, in part, that it should not be required to file the specified data for the following reasons:

PURPA section 133 information is not necessary to carry out the purposes of section 133.

The information provided pursuant to section 133 is not used.

The cost of section 133 information gathering and compilation is excessive.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before 45 days following the date this notice is published in the Federal Register. Within that 45 day period, such person must also serve a copy of such comments on: Leighton & Sherline, Attn: Lee Sherline, 1010

Massachusetts Ave., NW., Suite 101, Washington, DC 20001-5402.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-27170 Filed 11-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA86-51-000]

### Indianapolis Power & Light Co.; Establishing Intervention and Shortened Briefing Procedures

November 18, 1987.

By letter order dated September 25, 1987, in this docket, the Commission issued a report summarizing the results of a staff audit of the books and records of Indianapolis Power & Light Company (Company). The letter order noted the Company's disagreement with certain matters contained in the report and directed the Company to notify the Commission whether it consents to the disposition of the contested matters<sup>1</sup> under the shortened procedures set forth in Part 41 of the Commission's regulations.<sup>2</sup>

On October 26, 1987, the Company notified the Commission that it consented to the disposition of the contested matters under the shortened procedures.

The following schedule is hereby established:

(A) Any person desiring to participate in this docket should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1987)). All such protests or motions should be filed within 30 days after publication of this notice in the Federal Register. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

(B) The Company, any interested party and the Commission trial staff shall file with the Commission within 30 days of the date of publication of this notice in the Federal Register a memorandum of facts and arguments addressing the contested matters noted herein in accordance with Part 41 of the Commission's regulations under the Federal Power Act.

<sup>1</sup> An explanation of the contested matters is set forth in the letter order.

<sup>2</sup> 18 CFR Part 41 (1987).



(C) Reply memoranda shall be filed with the Commission within 20 days thereafter.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 87-27099 Filed 11-24-87; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP87-143-001]**

**MIGC, Inc.; Compliance Filing**

November 20, 1987.

Take notice that on November 13, 1987, MIGC, Inc. ("MIGC") tendered for filing Second Revised Sheet No. 39, Second Revised Sheet Nos. 40 through 52, and First Revised Sheet Nos. 165 and 188, all to MIGC's FERC Gas Tariff, Original Volume No. 1. These tariff sheets are proposed to become effective October 1, 1987.

MIGC states that the instant filing is being submitted in compliance with Commission Order No. 472-B and the Commission's October 16, 1987 Order in this docket which required MIGC to: (1) Include Annual Charge Adjustment charges for all of MIGC's transportation rate schedules; (2) include in its tariff a statement of MIGC's intent not to recover any of such ACA charges through a general rate proceeding under section 4 of the Natural Gas Act; and (3) repaginate certain of its tariff sheets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before November 27, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 87-27171 11-24-87; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP87-141-002]**

**Natural Gas Pipeline Co. of America; Proposed Changes in FERC Gas Tariff**

November 20, 1987.

Take notice that on November 16, 1987, Natural Gas Pipeline Company of America (Natural) tendered for filing the

below listed tariff sheets to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective April 1, 1988:

Substitute Seventh Revised Sheet No. 8

Substitute Fourth Revised Sheet No. 13

First Revised Sheet No. 126

Substitute First Revised Sheet No. 127

First Revised Sheet Nos. 128 through 132

Substitute Original Sheet Nos. 157

through 162

Natural states that the tariff sheets were submitted in compliance with the Commission's Order issued October 30, 1987, at Docket Nos. RP87-141-000 and 001. Natural also states that the submission of this compliance filing is without prejudice to Natural's rights to seek rehearing of the October 30, 1987 order or to any position Natural may take in further proceedings in Docket No. RP87-141.

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective April 1, 1988.

A copy of the filing was mailed to Natural's jurisdictional customers, interested State regulatory agencies, and all parties set out on the official service list at Docket No. RP87-141-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before November 27, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 87-27172 Filed 11-24-87; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP88-24-000]**

**Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff**

November 18, 1987.

Take notice that on November 13, 1987, Northern Border Pipeline Company (Northern Border) tendered for filing to become a part of Northern Border Pipeline Company's FERC Gas Tariff, Original Volumes Nos. 1 and 2 the following tariff sheets:

Original Volume No. 1

Third Revised Sheet No. 157

First Revised Sheet No. 158

Second Revised Sheet No. 253

First Revised Sheet Nos. 400 through 409

Original Volume No. 2

First Revised Sheet No. 54

The revised tariff sheets were filed to reflect a revised pro forma U.S. Shippers Service Agreement, to add partner liability language to comply with Northern Border's General Partnership Agreement and to update the Maximum Rate and Minimum Revenue Credit under Rate Schedule IT-1.

Northern Border has requested that the Sheet Nos. 253 and 400 through 409 in Original Volume No. 1 and Sheet No. 54 in Original Volume No. 2 be effective on December 14, 1987 and Sheet Nos. 157 and 158 in Original Volume No. 1 be effective on January 1, 1988. Copies of this filing have been sent to all of Northern Border's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 25, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 87-27105 Filed 11-24-87; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. TA88-1-59-001]**

**Northern Natural Gas Co.; Change in Rates and Tariff Revisions**

November 18, 1987.

Take notice that on November 13, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing with the Commission to be effective December 1, 1987 the following tariff sheets to be included in Northern's FERC Gas Tariff, Third Revised Volume No. 1:

Third Revised Volume No. 1

Forty-Fifth Revised Sheet No. 4a

Substitute Fiftieth Revised Sheet No. 4b

Substitute Eighteenth Revised Sheet No. 4b.1

Third Substitute Forty-Ninth Revised Sheet No. 4b



**Original Volume No. 2**

Substitute Fifty-Seventh Revised Sheet No. 1c

Northern states that the purpose of the revised tariff sheets is to adjust its jurisdictional natural gas sales rates to reflect its purchased gas cost from Canadian suppliers in a manner consistent with Commission Opinion Nos. 256 and 258A.

Northern states that the effect of the proposed changes will be to transfer approximately \$3.4 million from Northern's demand rates to its commodity rates and will increase the Company's commodity PGA rate by \$.0082 per Mcf. The decrease in Northern's D-1 rate will be \$.057 per Mcf and the D-2 rate will decrease by \$.0020 per Mcf.

Northern requests a waiver of § 154.22 of the Commission's regulations to permit it to effectuate the proposed rates on December 1, 1987. Northern also requests a letter order on the instant filing by November 24, 1987. If Northern does not receive the letter order by this date, then Northern proposes to effectuate the proposed rates on January 1, 1988.

Copies of the filing were served on all of Northern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 25, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Acting Secretary.

[FR Doc. 87-27107 Filed 11-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-26-000]

**Northwest Alaskan Pipeline Co.; Tariff Changes**

November 20, 1987.

Take notice that on November 16, 1987, Northwest Alaskan Pipeline Company ("Northwest Alaskan"), 295 Chipeta Way, Salt Lake City, Utah 84108-1281, tendered for filing in Docket No. RP88-26-000 Twenty-First Revised

Sheet No. 5 to its FERC Gas Tariff Original Volume No. 2.

Northwest Alaskan states that it is submitting Twenty-First Revised Sheet No. 5 reflecting an increase in total demand charges for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. ("Pan-Alberta") and resold to Northwest Alaskan's U.S. purchasers, Northwest Natural Gas Company, Division of Enron Corp. ("Northern"), Panhandle Eastern Pipe Line Company ("Panhandle"), United Gas Pipe Line Company ("United") and Pacific Interstate Transmission Company ("PIT"), under Rate Schedule X-1, X-2, X-3 and X-4 respectively. The increase in total demand charges for Northwest Alaskan's customers results from exchange rate fluctuations, the collection of customs user fees paid by Northwest Alaskan during March-June 1987 but not included in the demand charges for those months, the collection of FERC Annual Charges paid in August 1987 by Northwest Alaskan, and increased demand charges from Pan-Alberta.

Northwest Alaskan states that it is submitting Twenty-First Revised Sheet No. 5 pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and Northern, Panhandle, United and PIT, and pursuant to Rate Schedules X-1, X-2, X-3 and X-4, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (January 1, 1988 through June 30, 1988) the demand charges and demand charge adjustments which Northwest Alaskan will charge during that period.

Northwest Alaskan requests that Twenty-First Revised Sheet No. 5 become effective January 1, 1988.

Northwest Alaskan states that a copy of this filing has been served on Northwest Alaskan's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 27, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-27174 Filed 11-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-25-000]

**South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff**

November 20, 1987.

Take notice that November 16, 1987, South Georgia Natural Gas Company (South Georgia) tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective December 1, 1987:

Original Sheet Nos. 4A-4B  
Original Sheet Nos. 16A-16FF  
Original Sheet Nos. 34B-34BB  
Original Sheet Nos. 42A-42X

South Georgia states that the tariff sheets establish as part of South Georgia's FERC Gas Tariff Rate Schedules FT and IT, the General Terms and Conditions for Rate Schedules FT and IT, Forms of Service Agreement under Rate Schedules FT and IT, and the initial rates for said rate schedules. Once effective, Rate Schedules FT and IT and their related tariff provisions will govern the terms, conditions, and rates under which firm and interruptible transportation will be generally available on South Georgia's pipeline system. Initially, South Georgia states that it will utilize Rate Schedules FT and IT to render self-implementing transportation services pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and the Commission's Regulations thereunder recently revised by Order Nos. 500 *et al.*

South Georgia further states that all complete, written requests for transportation received by South Georgia by November 20, 1987, will be given equal priority for purposes of the Commission's "first-come, first-served" requirement.

Copies of the filing were mailed to all of South Georgia's jurisdictional purchasers, shippers, and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before November 27, 1987. Protests will be considered by the



Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 87-27175 Filed 11-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-370-000 and CP88-4-000]

**Tennessee Gas Pipeline Co., and Columbia Gas Transmission Corp.; Informal Settlement and Technical Conference**

November 16, 1987.

Take notice that an informal settlement conference will be convened in Docket No. CP87-370-000 to discuss possible settlement of that proceeding and an informal technical conference will be convened in Docket No. CP88-4-000, to discuss and possibly resolve several issues raised by intervenors, and the Commission Staff. The conference will be held at 10:00 a.m. on December 4, 1987, at the office of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

On May 29, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), filed an application in Docket No. CP87-370-000 pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA). Tennessee requests authority to abandon a total of 150,000 dt per day of firm sales service to Columbia Gas Transmission Corporation (Columbia) and The Inland Gas Company, Inc. Tennessee also requests authority to sell, on a firm basis, a total of 150,000 dt per day of gas to The Cincinnati Gas and Electric Company and The Union Light, Heat and Power Company under Tennessee's CD-2 Rate Schedule and to construct and operate temporary and permanent compressor facilities necessary to implement this service.

On October 1, 1987, Columbia filed an application in Docket No. CP88-4-000 pursuant to sections 7(b) and 7(c) of the NGA. Columbia requests authority to lease capacity up to a maximum quantity of 183,000 Mcf per day in its Kentucky System to Tennessee. Columbia also requests pregranted abandonment authority upon termination of expiration of the term of the lease agreement. It is indicated that Tennessee will use the leased capacity

to implement the sales proposed in Docket No. CP87-370-000.

All parties to this proceeding, the Commission Staff, and interested members of the public are invited to attend. However, mere attendance at the conference will not confer party status.

Any person wishing to become a party to this proceeding must file a Motion to Intervene in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

For further information contact: Raymond E. James, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 357-9181.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 87-27097 Filed 11-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-177-044]

**Texas Eastern Transmission Corp.; Compliance Filing**

November 20, 1987.

Take notice that on November 16, 1987, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing in certain tariff sheets to its FERC Gas Tariff, Fifth Revised Volume No. 1, Fourth Revised Volume No. 1 and Original Volume No. 2.

Texas Eastern states that the purpose of this filing is to comply with the Stipulation and Agreement in Docket No. RP85-177-000, *et al.*, as approved by the Commission's December 19, 1986 and October 15, 1987 orders. The revised tariff sheets include, among other things:

(1) Elimination of the previously proposed direct billing mechanism for take-or-pay;

(2) Incorporation of a Gas Supply Inventory Reservation Charge;

(3) Revisions to Rate Schedule FT-1 and;

(4) Revisions regarding the advance notice required respecting conversion from firm sales to firm transportation and expanded opportunities to convert from firm sales to firm transportation.

Texas Eastern states that copies of the filing were served on all parties of record in Docket No. RP85-177-000, *et al.*, and on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of

Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before November 27, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 87-27176 Filed 11-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-85-000]

**Texas Gas Transmission Corp.; Informal Settlement Conference**

November 18, 1987.

Take notice that a conference will be convened in this proceeding on December 3, 1987, at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Carmen Gastilo, (202) 357-5737 or Robert C. Fallon, (202) 357-8418.

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 87-27100 Filed 11-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-27-000]

**United Gas Pipe Line Co.; Tariff Filing**

November 20, 1987.

Take notice that on November 17, 1987 United Gas Pipe Line Company (United) tendered for filing the following Tariff Sheets as part of its FERC Gas Tariff, First Revised Volume No. 1:

Original Sheet No. 4-G

Original Sheet No. 4-H

Original Sheet No. 4-I

Original Sheet No. 4-J

Original Sheet No. 4-K

United states that this filing is made consistent with the Commission's proposed Interim Rule and Statement of Policy pursuant to Order No. 500 issued August 7, 1987. The proposed tariff sheets reflect United's absorption of 50



percent of take-or-pay buy-out and buy-down costs and an assignment to jurisdictional sales customers of the remaining 50 percent. United has stated that this filing is made to provide a forum in which it can address the recovery of take-or-pay buy-out and buy-down costs resulting from contract reformations necessitated by changes in the natural gas industry. United reserves the right to revise the filing as necessary to reflect any modifications made by the Commission or as required by any appellate court.

Copies of this filing have been served upon United's jurisdictional sales customers and public service commissions of the states of Alabama, Florida, Louisiana, and Mississippi and the Texas Railroad Commission.

Any person desiring to be heard or to protest said filing should, on or before November 27, 1987, file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Such motions will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person desiring to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-27177 Filed 11-24-87; 8:45 am]

BILLING CODE 6717-01-M

## Office of Conservation and Renewable Energy

### Energy Conservation Program for Consumer Products; Petition for Waiver of Furnace Test Procedures From Carrier Corporation (F-015)

**AGENCY:** Conservation and Renewable Energy Office, DOT.

**SUMMARY:** Today's notice publishes a "Petition for Waiver" from the Carrier Corporation (Carrier) of Syracuse, New York, requesting a waiver from the existing Department of Energy (DOE) test procedures for furnaces and denies Carrier's Application for an Interim Waiver. Carrier manufactures residential and commercial heating and cooling appliances. Carrier requests relief from the DOE furnace test procedure relating to the temperature specifications when testing its gas-fueled forced-air condensing furnace

identified as model series 58SXB (Carrier brand) and model series 398B (Bryant, Day and Night, and Payne brands). The interim waiver is denied because Carrier has not provided sufficient information for the Department to evaluate what, if any, economic impact on competitive disadvantage Carrier will likely experience absent a favorable determination on the interim waiver. DOE is soliciting comments, data, and information respecting the petition for waiver.

**DATE:** DOE will accept comments, data and information not later than December 28, 1987.

**ADDRESS:** Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-015, Mail Stop CE-132, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

#### FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-132, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127; Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

#### Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, 92 Stat. 3266, and the National Appliance Energy Conservation Act of 1987, Pub. L. 100-12, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE has amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. DOE further amended the Department's appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy to grant an interim waiver from test procedure

requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986. The waiver process allows the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of a waiver.

The interim waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an interim waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the petition for waiver will be granted and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. Each Application for an Interim Waiver is to demonstrate the likely success of the petition for waiver and shall address what economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the Application for Interim Waiver.

Carrier submitted a Petition for Waiver and an Application for an Interim Waiver from the Department's furnace test procedures relating to the temperature specification when testing its gas-fueled forced-air condensing furnace identified as model series 58SXB (Carrier brand) and model series 398B (Bryant, Day and Night, and Payne brands). In addition, by letter dated October 13, 1987, Carrier discussed issues relating to the development of computer software for test purposes.

Carrier's application for interim waiver does not provide sufficient information for the Department to evaluate what, if any, economic hardship Carrier will experience absent a favorable determination on the application. Although Carrier states that "Failure to permit Carrier to test the furnaces in the way they were designed to be used will result in economic hardship and competitive disadvantage," the company neither explains this statement nor demonstrates what economic hardship



and competitive disadvantage Carrier would experience absent a favorable determination on the Application. Carrier's statement does not address the issues required in an Application for Interim Waiver. The interim waiver provisions were established to provide the Department with the ability to grant immediate regulatory relief to a manufacturer during the period DOE is considering a manufacturer's petition for a test procedure waiver. Carrier does not address why such immediate relief is justified. In its October 13, 1987, letter and the Petition for Waiver, Carrier infers that they would suffer economic hardship and competitive disadvantage by having to develop computer software specifically for use in testing this series of furnaces. Carrier does not state what it would cost to develop this "special software." However, the Department believes that testing any furnace in accordance with DOE furnace test procedures requires, to some extent, manufacturers to develop computer software, e.g., furnace control circuit bypass. Without any indication of the magnitude of "special software" development required, DOE can not conclude the development of "special software" is an economic hardship or that Carrier will suffer competitive disadvantage. Finally, Carrier does not provide any explanation as to why immediate relief from the test procedures is warranted, e.g., scheduled production would have to be delayed until a determination on the petition for waiver is issued. It is not apparent that a delay in making a determination, i.e., denial of the application, will have any impact on Carrier. Therefore, Carrier's Application for an Interim Waiver requesting relief from the DOE test procedures for its design of gas-fueled forced-air condensing furnace identified as model series 58SXB (Carrier brand) and model series 398B (Bryant, Day and Night, and Payne brands) is denied. This decision does not prejudice subsequent Applications for an Interim Waiver Carrier may submit on this issue.

Carrier's petition requests a waiver from the maximum air temperature rise specification in the existing test procedure for furnaces, and to be allowed to test at the nominal air temperature rise.

Generally, nominal temperature rise is the manufacturer's recommended operating condition when installed in a home and maximum temperature rise is the manufacturer's recommended upper limit of operating conditions. Both nominal and maximum temperature rise are specified on the manufacturer's rating plate. Carrier contends that since

its patented control package incorporated in the above mentioned furnace allows operation only at nominal temperature rise, testing at nominal temperature rise is appropriate.

Carrier's petition makes reference to confidential and proprietary information, namely, an application for patent, which Carrier has submitted with the petition. This is judged to be confidential by Carrier. This application for patent, concerning the control package, is still pending before the U.S. Patent Office. Carrier also submitted a related patent ("Adaptive Blower Motor Controller," U.S. Patent No. 4,648,551). A copy of this granted patent can be obtained by contacting the U.S. Patent Office in Washington, DC (Telephone Number 202-557-3158) or from DOE as mentioned earlier in today's notice. Carrier has communicated to DOE that the granted patent is not the direct result of the application submitted for Letters Patent. Therefore, Carrier maintains that the submitted application for patent should remain confidential. DOE has reviewed this material in accordance with 10 CFR 1004.11, DOE's rules on proprietary information, and has determined that the application for patent is confidential and proprietary. Consequently, today's publication does not include the application for patent.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver." DOE solicits comments, data, and information respecting the petition. In addition, pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations, the following letter denying the Application for Interim Waiver was issued to the Carrier Corporation.

Issued in Washington, DC, November 12, 1987.

**Donna R. Fitzpatrick,**  
*Assistant Secretary, Conservation and Renewable Energy.*

Department of Energy, Washington, D.C. 20461.  
November 12, 1987.

Mr. Edward A. Bailly,  
*Director, Government and Industry Relations, Carrier Corporation, P.O. Box 4808, Syracuse, New York 13221.*

Dear Mr. Bailly: This is in response to your August 3, 1987, Application for Interim Waiver from the Department of Energy (DOE) test procedures for furnaces when testing your company's design of a gas-fueled forced-air condensing furnace identified as model series 58SXB (Carrier brand) and model series 398B (Bryant, Day and Night, and Payne brands).

Pursuant to the Energy Policy and Conservation Act, as amended, the Department has prescribed test procedures to measure the energy consumption of certain major household appliances, including

furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear in the Code of Federal Regulations at 10 CFR Part 430, Subpart B.

DOE amended the test procedure regulations on September 26, 1980 (45 FR 64108) and November 26, 1986 (51 FR 42823). These provisions allow the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inadequate comparative data. The 1986 amendments provide that an interim waiver from test procedure requirements will be granted by the Assistant Secretary for Conservation and Renewable Energy if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. Paragraph 430.27.

Carrier's application does not provide sufficient information for the Department to evaluate what, if any, economic hardship Carrier will experience absent a favorable determination on the application. Although Carrier states that "Failure to permit Carrier to test the furnaces in the way they were designed to be used will result in economic hardship and competitive disadvantage," the company neither explains this statement nor demonstrates what economic hardship and competitive disadvantage Carrier would experience absent a favorable determination on the Application.

Carrier's statement does not address issues required in an Application for Interim Waiver. The interim waiver provisions were established to provide the Department with the ability to grant immediate regulatory relief to a manufacturer during the period DOE is considering a manufacturer's petition for a test procedure waiver. Carrier does not address why such immediate relief is justified.

In its October 13, 1987, letter and the petition for Waiver, Carrier infers that they would suffer economic hardship and competitive disadvantage by having to develop computer software specifically for use in testing this series of furnaces. Carrier does not state what it would cost to develop this "special software." However, the Department believes that testing any furnace in accordance with DOE furnace test procedures requires, to some extent, manufacturers to develop computer software, e.g., furnace control circuit bypass. Without any indication of the magnitude of "special software" development required, DOE cannot conclude that development of "special



software" is an economic hardship or that Carrier will suffer competitive disadvantage.

Finally, Carrier does not provide any explanation as to why immediate relief from the test procedures is warranted, e.g., scheduled production would have to be delayed until a determination on the petition for waiver is issued. It is not apparent that a delay in making a determination, i.e., denial of the application, will have any impact on Carrier.

Therefore, Carrier's Application for an Interim Waiver requesting relief from the DOE test procedures for its design of gas-fueled forced-air condensing furnace identified as model series 58SXB (Carrier brand) and model series 398B (Bryant, Day and Night, and Payne brands) is denied.

This decision does not prejudice either the petition for waiver on the issue or any subsequent Applications for Interim Waiver Carrier may submit.

Yours truly,

Donna R. Fitzpatrick,

*Assistant Secretary, Conservation and Renewable Energy.*

August 3, 1987.

The Assistant Secretary for Conservation and Renewable Energy, United States Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585.

Re: *Petition For Waiver*

Gentlepersons: This is a petition for waiver which is being submitted pursuant to Title 10 CFR 430.27 as amended November 14, 1986. Waiver is requested from Test Procedures for Measuring the Energy Consumption of

Furnaces found in Appendix N to Subpart B of Part 430. Waiver is requested for electronically controlled, gas-fueled, forced-air condensing furnaces.

These innovative new furnaces will be identifiable as the 58SXB series (Carrier brand) and 398B series (Bryant, Day & Night and Payne brands).

The furnace models described above utilize a self-calibrating variable-speed circulating air blower control system. This blower control system is capable of providing constant air flow independent of external static pressure (up to the maximum external static pressure specified on the furnace rating plate). The attached blower curve compares a typical blower curve to that produced by the constant airflow blower control. Also, attached is the patent application describing the proprietary blower control method. Please recognize that the information provided in that patent application is a confidential trade secret of Carrier Corporation, and confidential treatment by DOE is therefore requested. In accordance with prescribed procedures, only a single copy of that confidential information is being submitted herewith.

Since the blower control is programmed to provide constant airflow, the circulating air temperature rise across the furnace is also constant. For the furnace models described, the blower provides a constant temperature rise that is equal to the nominal temperature rise specified on the furnace rating plate.

The procedures described in DOE 10 CFR, Part 430, Appendix N specify that a condensing furnace be tested at the maximum temperature rise, which is typically

15 degrees F above the nominal rise. The furnace models described above, having a constant airflow blower control, are programmed to operate at the nominal air temperature rise. Therefore, Carrier requests a waiver from the maximum air temperature rise requirement for condensing furnace in favor of the nominal air temperature rise.

Carrier Corporation has devoted over four years to the development of this new furnace series at a cost exceeding even figures. The advantages to consumers of the innovative design utilizing electronically commutated draft inducer and blower motors are an improvement of approximately two percentage points AFUE, approximate 80% reduction in electric consumption and significantly lower sound levels when compared to Carrier's current lines of single speed condensing furnaces. The required testing at the maximum temperature rise would require the development of special software for use in test purposes only and which would not reflect performance in actual consumer use and would understate the efficiency of the equipment. Economic hardship and competitive disadvantage to Carrier would therefore result.

Carrier is not aware of any other manufacturer(s) who offer for sale in the United States furnaces which incorporate a self-calibrating variable-speed circulating air blower control system.

Respectfully,

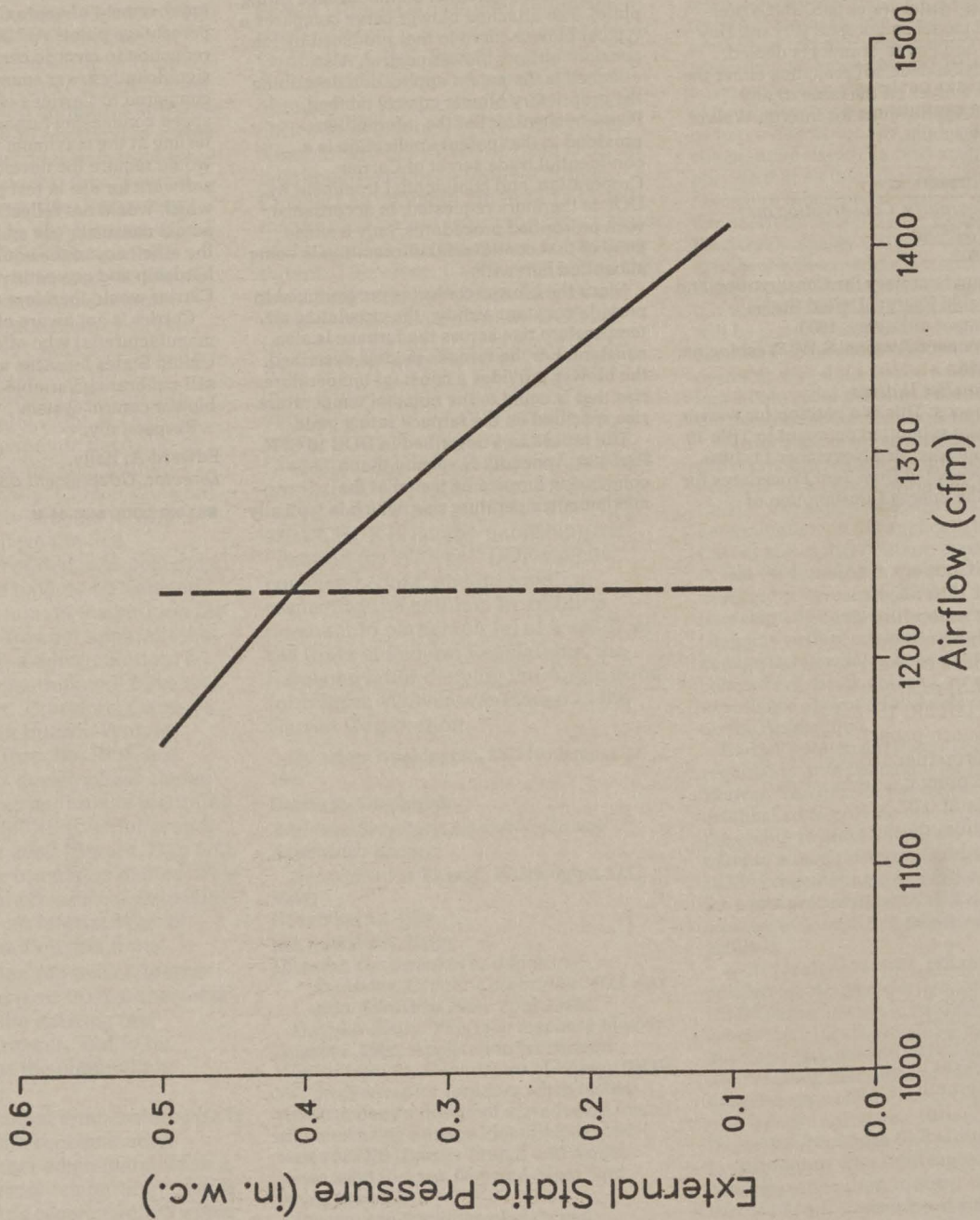
Edward A. Baily,

*Director, Government and Industry Relations.*

BILLING CODE 5450-01-M



# CARRIER CORPORATION CONSTANT AIRFLOW BLOWER CONTROL



Legend  
Existing  
Constant Airflow

Models 398B and 58SXB



**ENVIRONMENTAL PROTECTION AGENCY**

[PF-487; FRL-3293-8]

**Pesticide Tolerance Petitions****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

**SUMMARY:** This notice announces the filing of pesticide petitions (PP) and/or food and feed additive petitions (FAP) proposing the establishment of tolerances and/or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

**ADDRESS:** By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not

contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Registration Division (TS-767C), Attn.: Product Manager (PM) named in the petition, Environmental Protection Agency, Office of Pesticide Programs, 401 M St. SW., Washington, DC 20460.

In person, contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/telephone no.	Address
Dennis Edwards (PM 12)	Rm. 202, CM #2, 703-557-2386	EPA, 1921 Jefferson Davis Hwy., Arlington, VA 22202.
George LaRocca (PM 15)	Rm. 204, CM #2, 703-557-2400	Do.
Joseph Tavano (PM 17)	Rm. 207, CM #2, 703-557-2690	Do.
Lois Rossi (PM 21)	Rm. 227, CM #2, 703-557-1900	Do.
Richard Mountfort (PM 23)	Rm. 237, CM #2, 703-557-1830	Do.

**SUPPLEMENTARY INFORMATION:** EPA has received pesticide and/or food and feed additive petitions as follows, proposing the establishment and/or amendment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

**Initial Filings**

1. **PP 7F3538.** Coopers Animal Health, Inc., 2000 South 11th St., Kansas City, KS 66103, proposes amending 40 CFR Part 180 by establishing a regulation to permit the residues of the insecticide cyhalothrin [(R,S)-alpha-cyano-3-phenoxybenzyl (1R,3R; 1S, 3S)-3-(2-chloro-3,3,3-trifluoro-prop-1-enyl)-2,2-dimethyl-cyclopropanecarboxylate] in cattle fat at 0.05 ppm, cattle meat and meat byproducts at 0.01 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 15).

2. **PP 7F3540.** E.I. Du Pont de Nemours & Co., Inc., Agricultural Products Department, Barley Mill Plaza, Walker's Mill Building, Wilmington, DE 19898, proposes amending 40 CFR Part 180 by establishing a regulation to permit the residues of the herbicide DPX-L5300 [methyl 2-[[[N-(4-methoxy-6-methyl-1,3,5-triazin-2-yl) methylamino] carbonyl]amino]sulfonyl]benzoate] in or on wheat grain at 0.05 ppm, wheat straw at 0.1 ppm, barley grain at 0.05 ppm, and barley straw at 0.1 ppm. The proposed analytical method for determining residues is liquid chromatography. (PM 23).

3. **PP 7G3541.** Dow Chemical U.S.A., Agricultural Products Department, P.O.

Box 1706, Midland, MI 48640, proposes amending 40 CFR Part 180 by establishing a regulation to permit the residues of the herbicide fluroxypyr (4-amino-3,5-dichloro-6-fluoro-2-pyridinyloxyacetic acid) methylheptyl ester in or on forage grasses and grass hay at 400 parts per million (ppm); milk at 0.1 ppm; meat, fat, and meat byproducts except kidney of cattle, goats, hogs, horses, and sheep at 0.2 ppm; and kidney of cattle, goats, hogs, horses, and sheep at 2.0 ppm. The proposed analytical method for determining residues is gas chromatography using electron capture detection. (PM 23).

4. **PP 7F3542.** Rhone-Poulenc, Inc., Agrochemical Division, P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ, proposes amending 40 CFR 180.399 by establishing a regulation to permit the residues of the fungicide iprodione ([3-(3,5-dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboximide]), its isomer [3-(1-methylethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide], in or on caneberries at 25.0 ppm. The proposed analytical method for determining residues is gas liquid chromatography using an electron capture detector. (PM 23).

5. **PP 7F3545.** Rhone-Poulenc, Inc., Agrochemical Division, Monmouth Junction, NJ 08852, proposes amending 40 CFR 180.399 by establishing a regulation to permit the residues of the fungicide iprodione ([3-(3,5-

dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboximide]), its isomer [3-(1-methyl-ethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide] in or on tomatoes at 3.0 ppm. The proposed analytical method for determining residues is gas liquid chromatography. (PM 21).

6. **PP 7F3546.** FMC Corp., Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103, proposes amending 40 CFR Part 180 by establishing a regulation to permit residues of the insecticide bifenthrin (2-methyl[1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate and its metabolite, 4'-hydroxy in or on corn (field, seed, pop) grain at 0.05 ppm, silage (forage) at 2.0 ppm, stover (fodder) at 4.0 ppm, milk at 0.02 ppm, milk fat at 0.20 ppm, meat at 0.10 ppm, fat at 0.30 ppm, and meat byproducts at 0.10 ppm of goats, hogs, horses, and sheep. The proposed analytical method for determining residues is gas chromatography. (PM 15).

7. **PP 7F3553.** Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., Hillsborough Rd., Three Bridges, NJ 08887, proposes amending 40 CFR 180.242 by establishing a regulation to permit the residues of the fungicide thiabendazole [2-(4-thiazolyl)benzimidazole] in or on corn grain at 20 ppm and the revocation of the present tolerance of 10 ppm on grapes. The proposed analytical method



for determining residues is a spectrophotofluorometer. (PM 21).

8. *PP 7F3560*. ICI Americas, Inc., Agricultural Products, Concorde Pike and New Murphy Rd., Wilmington, DE 19897, proposes amending 40 CFR Part 180 by establishing a regulation to permit the residues of the insecticide ( $\pm$ )-*a*-cyano-(3-phenoxyphenyl) methyl ( $\pm$ )-*cis*-3-(Z-2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate in or on wheat grain at 0.01 ppm, sweet corn at 0.01 ppm, sunflower seeds at 0.03 ppm, poultry meat, fat, and meat byproducts at 0.01 ppm. The proposed analytical method for determining residues is gas liquid chromatography. (PM 15).

9. *PP 7F3570*. Texknit Service and Supply Corp., DBA/The Continental Shelf, Pleasant Drive, Lochmere, NH 03252, proposes amending 40 CFR Part 180 by establishing an exemption from the requirement of a tolerance for a seaweed extract derived from cytokinin. (PM 25).

10. *FAP 7H5540*. Rhone-Poulenc, Inc., Agrochemical Division, Monmouth Junction, NJ 08852, proposes amending 21 CFR 561.263 by establishing a regulation to permit the residues of the fungicide iprodione ([3-(3,5-dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboximide]), its isomer [3-(1-methyl-ethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide], and its metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide] in or on tomato pomace, wet at 15.0 ppm and tomato pomace, dry at 55.0 ppm. The proposed analytical method for determining residues is gas liquid chromatography (PM 21).

11. *FAP 7H5541*. Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., Hillsborough Rd., Three Bridges, NJ 08887, proposes amending 21 CFR 561.380 by establishing a regulation to permit the residues of the fungicide thiabendazole [2-(4-thiazolyl)benzimidazole] in or on corn bran at 125 ppm, corn fines at 40 ppm, corn germ at 30 ppm, corn soapstock at 25 ppm, and the revocation of the present tolerance of 150 ppm on grape pomace (dry or wet). (PM 21).

12. *FAP 7H5543*. ICI Americas, Inc., Agricultural Products, Concorde Pike and New Murphy Rd., Wilmington, DE 19897, proposes amending 21 CFR Part 561 by establishing a regulation to permit the residues of the insecticide (+)-*a*-cyano-(3-phenoxyphenyl) methyl

(+)-*cis*-3-(Z-2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate in or on sunflower hulls at 0.7 ppm and sunflower oil at 0.05 ppm. (PM 15).

13. *FAP 7H5544*. BASF Corp., Chemicals Division, 100 Cherry Hill Rd., Parsippany, NJ 07054, proposes amending 21 CFR 561.197 by establishing a regulation to permit the residues of the herbicide *N,N*-dimethylpiperdinium chloride in or on raisins at 6 ppm, raisin waste at 26 ppm, and pomace, wet and dry at 3 ppm. (PM 25).

14. *FAP 7H5545*. FMC Corp., Agricultural Chemical Group, Research and Development Department, 2000 Market St., Philadelphia, PA 19103, proposes amending 21 CFR Part 193 by establishing a regulation to permit the residues of carbosulfan (2,3-dihydro-2,2-dimethyl-7-benzofuranyl [(dibutylamino)thio] methylcarbamate; and its carbamate cholinesterase inhibiting metabolites, carbofuran (2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*n*-methylcarbamate) and 3-hydroxycarbofuran (2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-*n*-methylcarbamate) in or on dried hops at 15.5 ppm total residues of carbofuran consisting of 3.5 ppm parent (carbosulfan) and 12.0 ppm of its cholinesterase inhibiting metabolites, carbofuran and 3-hydroxycarbofuran, of which no more than 1.0 ppm is carbofuran. (PM 12).

15. *PP 8F3572*. MAAG Agrochemical, Research and Development, HLR Sciences, Inc., P.O. Box X, Vero Beach, FL 32961-3023, proposes amending 40 CFR Part 180 by establishing a regulation for the residues of the insecticide fenoxycarb-ethyl (2-[4-ethyl]carbamate in or on grass and grass hay at 0.30 ppm and citrus fruits (as a group) at 0.05 ppm. The proposed analytical method for determining residues is column chromatography. (PM 17).

Dated: November 10, 1987.

Edwin F. Tinsworth,  
Director, Registration Division, Office of  
Pesticide Programs.

[FR Doc. 87-26916 Filed 11-24-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180746; FRL-3294-3]

## Pesticide Programs; Annual Report on Crisis Exemptions

AGENCY: Environmental Protection Agency (EPA).

## ACTION: Notice.

**SUMMARY:** This notice summarizes the number of crisis exemptions declared and the number of crisis exemptions revoked during the fiscal year 1987. State and Federal agencies issued 33 crisis exemptions authorizing unregistered pesticide uses in accordance with the regulations in 40 CFR 166.40 pursuant to section 18 of FIFRA. During this same time period, EPA revoked the crisis provision for use of two pesticides. This annual report is required under 40 CFR 166.49.

**FOR FURTHER INFORMATION CONTACT:** Donald R. Stubbs, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1806.

**SUPPLEMENTARY INFORMATION:** The regulations pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act require EPA to issue annually a notice for publication in the *Federal Register* that summarizes the number of crisis exemptions declared and the number of crisis exemptions revoked.

Subpart C of 40 CFR Part 166 sets forth the regulations dealing with crisis exemptions. This Subpart allows the head of a Federal or State agency to issue a crisis exemption in situations involving an unpredictable emergency situation when: (1) An emergency condition exists, and (2) the time element with respect to the application of the pesticide is critical, and there is not sufficient time either to request a specific, quarantine, or public health exemption or, if such a request has been submitted, for EPA to complete review of the request. This Subpart also provides for EPA review of crisis exemptions and revocation of individual crisis exemptions or the authority of a State and Federal agency to utilize the crisis provisions.

During the fiscal year 1987 (October 1, 1986 through September 30, 1987), a total of 33 crisis exemptions were declared by State and Federal agencies. A breakdown of the crisis declarations by State/Federal agencies follows:



State/Federal agency	No. of crisis exemptions	Pesticide	Site
Arizona.....	1	Linuron.....	Asparagus.
Arkansas.....	1	Sethoxydim.....	Snap beans.
California.....	3	Hexakis.....	Watermelon.
		Malathion.....	Persimmons.
		Phosdrin.....	Pumpkins.
Florida.....	4	Cyromazine.....	Tomatoes.
		Iprodione.....	Carrots.
		Mancozeb.....	Mangos.
Georgia.....		Sodium chlorate.....	Southern peas.
	2	Permethrin.....	Peas.
Iowa.....		Sodium chlorate.....	Southern peas/lima beans.
Louisiana.....	1	Sodium chlorate.....	Dry edible beans.
	3	Cypermethrin.....	Grain sorghum.
		Iprodione.....	Rice.
Massachusetts.....		Triadimefon.....	Strawberries.
Michigan.....	1	Sodium fluoaluminate.....	Potatoes.
Minnesota.....	1	Sodium chlorate.....	Dry edible beans.
North Carolina.....	1	Sodium chlorate.....	Dry beans.
North Dakota.....	1	Sethoxydim.....	Irish potatoes.
	2	Metribuzin.....	Lentils.
Oregon.....		Sodium chlorate.....	Wheat.
	2	Sethoxydim.....	Peas.
Texas.....		Sethoxydim.....	Snap beans.
	6	Sodium chlorate (2).....	Black-eyed peas.
		Sodium chlorate.....	Southern peas.
		Botran.....	Peanuts.
		Iprodione.....	Rice.
USDA.....		Permethrin.....	Kale, kohlrabi, & mustard greens.
	2	Diazinon.....	Fruit & Veggies.
Washington.....		Malathion.....	Fruit & Veggies.
Wisconsin.....	1	Fenvalerate.....	Cranberries.
	1	Metolaxyl.....	Ginseng.

During the 1987 fiscal year, EPA revoked the authority of Florida to utilize the crisis provision for the use of mancozeb on mangos and Louisiana to utilize the crisis provision for the use of triadimefon on strawberries. Additionally, the authority of Massachusetts to declare a future crisis use of sodium fluoaluminate on potatoes is currently under review.

Authority: 7 U.S.C. 136.

Dated: November 10, 1987.

Douglas D. Camp,

Director, Office of Pesticide Programs.

[FR Doc. 87-26917 Filed 11-24-87; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirements Submitted to Office of Management and Budget for Review

November 18, 1987.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Terry Johnson,

Federal Communications Commission, (202) 634-1535. Persons wishing to comment on these information collections should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: None.

Title: Proposal for State and Local Public Safety Agencies to Develop Regional Plans that Define their Electromagnetic Spectrum Requirements and Use of Frequencies Allocated for Public Safety Use (Notice of Proposed Rulemaking, Gen. Doc. No. 82-112)

Action: New collection

Respondents: State or local governments

Frequency of Response: On occasion

Estimated Annual Burden: 48

Respondents: 15,360 Hours

Needs and Uses: This proposal will require public safety agencies to submit to the Commission regional plans for their areas. The regional plans will define electromagnetic spectrum requirements and how the agencies plan to use the frequencies allocated for public safety use.

OMB Number: 3060-0286

Title: Section 80.302—Notice of discontinuance, reduction, or impairment of service involving a distress watch

Action: Extension

Respondents: Individual or households, state or local governments, businesses (including small businesses), and non-profit institutions

Frequency of Response: On occasion

Estimated Annual Burden: 160

Respondents: 160 Hours

Needs and Uses: This requirement is necessary to ensure that the U.S. Coast Guard is informed when a coast station which is responsible for maintaining a listening watch on a designated marine distress and safety frequency discontinues, reduces, or impairs its communication services. This notification allows the Coast Guard to seek an alternate means of providing radio coverage to protect the safety of life and property at sea or object to the planned diminution of service.

OMB Number: 3060-0289

Title: Section 76.601, Performance Tests

Action: Revision

Respondents: Business (including small businesses)

Frequency of Response: Recordkeeping requirement

Estimated Annual Burden: 3,816

Recordkeepers: 57,240 Hours

Needs and Uses: Cable television system operators must make signal leakage measurements at least once each calendar year and maintain the results of tests at local business offices. This data is used by Commission field inspectors to ensure that no signal leakage problems exist which could cause interference to safety-of-life radio frequencies.



Federal Communications Commission

William J. Tricarico,  
Secretary.

[FR Doc. 87-27071 Filed 11-24-87; 8:45 am]

BILLING CODE 6712-01-M

#### FEDERAL HOME LOAN BANK BOARD

[No. AC-677; FHLBB No. 3663]

##### **Anniston Federal Savings and Loan Association; Final Action; Approval of Conversion Application**

November 18, 1987.

Notice is hereby given that on November 10, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Anniston Federal Savings and Loan Association, Anniston, Alabama, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat of the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-27179 Filed 11-24-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-684; FHLBB No. 2168]

##### **Cargill Bank of Connecticut; Final Action; Approval of Conversion Application**

November 18, 1987.

Notice is hereby given that on November 12, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Cargill Bank of Connecticut, Putnam, Connecticut for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Boston, One Financial Center, 20th Floor, Boston, Massachusetts 02110.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-27180 Filed 11-24-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-675; FHLBB No. 1794]

##### **Deer Park Federal Savings and Loan Association; Final Action; Approval of Conversion Application**

November 18, 1987.

Notice is hereby given that on November 10, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Deer Park Federal Savings and Loan Association, Cincinnati, Ohio for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium II, 221 East 4th Street, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 27181 Filed 11-24-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-673; FHLBB No. 4207]

##### **First Federal Savings and Loan Association of Georgetown; Final Action Approval of Conversion Application**

November 18, 1987.

Notice is hereby given that on November 12, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association, of Georgetown, Georgetown, South Carolina for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30348.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 27182 Filed 11-24-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-672; FHLBB No. 5896]

##### **First Federal Savings Bank of Tennessee; Final Action; Approval of Conversion Application**

November 18, 1987.

Notice is hereby given that on November 12, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings of Tennessee, Tullahoma, Tennessee, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium II, 221 E. 4th Street, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-27183 Filed 11-24-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-680; FHLBB No. 3766]

##### **First Savings Bank, F.S.B.; Final Action; Approval of Conversion Application**

November 18, 1987.

Notice is hereby given that on November 12, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Savings Bank, F.S.B., Hickory, North Carolina, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-27184 Filed 11-24-87; 8:45 am]

BILLING CODE 6720-01-M



[No. 87-686; FHLBB No. 2407]

**Forrest City Federal Savings and Loan Association; Final Action; Approval of Conversion Application**

November 18, 1987.

Notice is hereby given that on November 12, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Forrest City Federal Savings and Loan Association, Forrest City, Arkansas, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Dallas, 500 E John Carpenter Freeway, Irving, Texas 75062.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-27185 Filed 11-24-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-681, FHLBB No. 2092]

**Franklin Savings and Loan Co.; Final Action; Approval of Conversion Application**

November 18, 1987.

Notice is hereby given that on November 12, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Franklin Savings and Loan Company, Cincinnati, Ohio, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC, 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium II, 221 E. 4th Street, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-27186 Filed 11-24-87; 8:45]

BILLING CODE 6720-01-M

[No. AC-674; FALBB No. 5168]

**Haywood Savings and Loan Association; Final Action; Approval of Conversion Application**

November 18, 1987.

Notice is hereby given that on November 6, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved, the application of Haywood Savings and Loan Association, Winesville, North Carolina, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30348.

By the Federal Home Loan Bank Board.

John F. Ghizzoni

Assistant Secretary.

[FR Doc. 87-27189 Filed 11-24-87; 8:45 am]

BILLING CODE 6720-01-M

[No. 87-676; FHLBB No. 0287]

**Granville Federal Savings and Loan Association; Final Action; Approval of Conversion Application**

November 18, 1987.

Notice is hereby given that on November 10, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Granville Federal Savings and Loan Association, Oxford, North Carolina, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Center Station, NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-27187 Filed 11-24-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-683; FHLBB No. 6557]

**Griffin Federal Savings and Loan Association; Final Action; Approval of Conversion Application**

November 18, 1987.

Notice is hereby given that on November 12, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel of his designee, approved the application of Griffin Federal Savings and Loan Association, Griffin, Georgia for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-27188 Filed 11-24-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-682; FHLBB No. 7555]

**Homestead Savings and Loan Association; Final Action; Approval of Conversion Application**

November 18, 1987.

Notice is hereby given that on November 12, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Homestead Savings and Loan Association, Portsmouth, Virginia, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30348.

By the Federal Home Loan Bank Board.

John F. Ghizzoni

Assistant Secretary.

[FR Doc. 87-27190 Filed 11-24-87; 8:45 am]

BILLING CODE 6720-01-M



[No. AC-679; FHLBB No. 2155]

**Pioneer Savings and Loan Association; Final Action; Approval of Conversion Application**

November 18, 1987.

Notice is hereby given that on November 12, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Pioneer Savings and Loan Association, Racine, Wisconsin, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Chicago, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,  
Assistant Secretary.

[FR Doc. 87-27191 11-24-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-678; FHLBB No. 1783]

**Security Federal Savings and Loan Association; Final Action; Approval of Conversion Application**

Notice is hereby given that on November 11, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Security Federal Savings and Loan Association, Cleveland, Ohio for permission to convert to the stock form of organization. Copies of the application are available for inspection at the office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium II, 221 E. 4th Street, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,  
Assistant Secretary.

[FR Doc. 87-27992 11-24-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-687; FHLBB No. 6283]

**Sycamore Savings and Loan Co.; Final Action; Approval of Conversion Application**

November 18, 1987.

Notice is hereby given that on November 12, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of The Sycamore Savings and Loan Company, Cincinnati, Ohio, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium II, 221 E. 4th Street, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,  
Assistant Secretary.

[FR Doc. 87-27193 Filed 11-24-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-685; FHLBB No. 8208]

**Vanguard Federal Savings and Loan Association; Final Action; Approval of Conversion Application**

November 18, 1987.

Notice is hereby given that on November 12, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Vanguard Federal Savings and Loan Association, Baltimore, Maryland, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,  
Assistant Secretary.

[FR Doc. 87-27194 Filed 11-24-87; 8:45 am]

BILLING CODE 6720-01-M

**FEDERAL MARITIME COMMISSION Agreement Filed**

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200060.

Title: Board of Commissioners of the Port of New Orleans Terminal Agreement.

Parties:

Board of Commissioners of the Port of New Orleans  
Coastal Cargo Company, Inc.

Synopsis: The proposed agreement provides Coastal Cargo Company, Inc. a three year lease of the Galvez Street Wharf, Shed and Rear Apron for the purposes of loading and discharging cargo to or from ocean-going vessels, barges and other water craft.

By Order of the Federal Maritime Commission.

Dated: November 19, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87-27096 Filed 11-24-87; 8:45 am]

BILLING CODE 6730-01-M

**FEDERAL RESERVE SYSTEM****Federal Open Market Committee; Domestic Policy Directive of September 22, 1987**

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on September 22, 1987.<sup>1</sup> The

<sup>1</sup> Copies of the Record of policy actions of the Committee for the meeting of September 22, 1987, are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.



directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests on balance that economic activity is expanding in the current quarter at a pace similar to that in the first half of the year. Total nonfarm payroll employment rose further in August after a large increase in July. The civilian unemployment rate remained at 6.0 percent, well below its level at the start of the year. Industrial production increased further in August following large gains in other recent months. Consumer spending, bolstered by a rise in auto sales, posted a large increase in August. Recent indicators of business capital spending point to some strength, particularly in equipment outlays. Housing starts fell in August to a level a little below their average in other recent months. Preliminary data suggest that the nominal U.S. merchandise trade deficit was unchanged in July from its June level but larger than the second-quarter average. The rise in consumer and producer prices has slowed in recent months, reflecting favorable price developments in food and energy.

Growth of the monetary aggregates strengthened in August, but for 1987 through August, expansion of both M2 and M3 remained below the lower ends of the ranges established by the Committee for the year; growth in M1 has been at a much reduced pace in 1987. Expansion in total domestic nonfinancial debt has moderated this year. Interest rates have risen considerably since the meeting on August 18. On September 4, the Federal Reserve Board approved an increase in the discount rate from 5-1/2 to 6 percent. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies has depreciated on balance since the latest meeting; some of the decline in the dollar early in the intermeeting period was later reversed.

The Federal Open Market Committee seeks monetary and financial conditions that will foster reasonable price stability over time, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives the Committee agreed at its meeting in July to reaffirm the ranges established in February for growth of 5-1/2 to 8-1/2 percent for both M2 and M3 measured from the fourth quarter of 1986 to the fourth quarter of 1987. The Committee agreed that growth in these aggregates around the lower ends of their ranges may be appropriate in light of developments with respect to velocity and signs of the potential for some strengthening in underlying inflationary pressures, provided that economic activity is expanding at an acceptable pace. The monitoring range for growth in total domestic nonfinancial debt set in February for the year was left unchanged at 8 to 11 percent.

For 1988, the Committee agreed on tentative ranges of monetary growth, measured from the fourth quarter of 1987 to the fourth quarter of 1988, of 5 to 8 percent for both M2 and M3. The Committee provisionally set the associated range for growth in total domestic nonfinancial debt at 7-1/2 to 10-1/2 percent.

With respect to M1, the Committee recognized that, based on experience, the

behavior of that aggregate must be judged in the light of other evidence relating to economic activity and prices; fluctuations in M1 have become much more sensitive in recent years to changes in interest rates, among other factors. Because of this sensitivity, which has been reflected in a sharp slowing of the decline in M1 velocity over the first half of the year, the Committee again decided at the July meeting not to establish a specific target for growth in M1 over the remainder of 1987 and no tentative range was set for 1988. The appropriateness of changes in M1 of the behavior of its velocity, developments in the economy and financial market, and the nature of emerging price pressures. The Committee welcomes substantially slower growth of M1 in 1987 than in 1986 in the context of continuing economic expansion and some evidence of greater inflationary pressures. The Committee in reaching operational decisions over the balance of the year will take account of growth in M1 in the light of circumstances then prevailing. The issues involved with establishing a target for M1 will be carefully reappraised at the beginning of 1988.

In the implementation of policy for the immediate future, the Committee seeks to maintain in degree of pressure on reserve positions sought in recent weeks. Somewhat greater reserve restraint or somewhat lesser reserve restraint would be acceptable depending on indications of inflationary pressures, the strength of the business expansion, developments in foreign exchange markets, as well as the behavior of the aggregates. This approach is expected to be consistent with growth in M2 and M3 over the period from August through December at annual rates of around 4 percent and around 6 percent, respectively. M1 is expected to continue to grow relatively slowly. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a deferral funds rate persistently outside a range of 5 to 9 percent.

By order of the Federal Open Market Committee, November 19, 1986.

**Normand Bernard,**

*Assistant Secretary, Federal Open Market Committee.*

[FR Doc. 87-27146 Filed 11-24-87; 8:45 am]

BILLING CODE 6210-01-M

### **Amity Bancorp, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities**

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of

Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question of whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 11, 1987.

**A. Federal Reserve Bank of Boston**  
(Robert M. Brady, Vice President) 600  
Atlantic Avenue, Boston, Massachusetts  
02106:

1. *Amity Bancorp, Inc.*, New Haven, Connecticut; to engage *de novo* through its subsidiary, *Amity Loans, Inc.*, New Haven, Connecticut, in consumer finance activities pursuant to § 225.25(b)(1) of the Board's Regulation Y. This activity will be conducted in the State of Colorado.

2. *Cenvest, Inc.*, Meriden, Connecticut; to engage *de novo* in making and servicing loans and other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

**B. Federal Reserve Bank of New York**  
(William L. Rutledge, Vice President) 33  
Liberty Street, New York, New York  
10045:

1. *Skandinaviska Enskilda Banken*, Stockholm, Sweden; to engage *de novo* through its subsidiaries, *FinansSkandic Corporation*, New York, in the extension of credit through the leasing of real property, and through *Swedish Suite Hotels*, New York, New York, in the extension of credit through the leasing of personal or real property pursuant to



§ 225.25(b)(5). Comments on this application must be received by December 10, 1987.

**C. Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Susquehanna Bancshares, Inc.*, Lititz, Pennsylvania; to engage *de novo* through its subsidiary, *Susquehanna Bancshares Life Insurance Company*, Phoenix, Arizona, in the reinsurance of credit life, accident and health insurance issued in connection with extensions of credit made through Applicant's subsidiary banks pursuant to § 225.25(b)(8) of the Board's Regulation Y.

**D. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Busey Corporation*, Urbana, Illinois; to engage *de novo* through its subsidiary, *First Busey Corporation Information Services, Inc.*, Busey, Illinois, in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

**E. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Barnesville Investment Corporation*, Barnesville, Minnesota; to engage *de novo* in selling annuities and single premium life insurance to the general public pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. This activity will be conducted in Barnesville, Minnesota. Comments on this application must be received by December 16, 1987.

Board of Governors of the Federal Reserve System, November 19, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-27079 Filed 11-24-87; 8:45 am]

BILLING CODE 6210-01-M

**Central Bancshares of the South, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulations Y (12 CFR 225.14) to become a bank holding company or acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the

application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the officers of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 16, 1987.

**A. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Central Bancshares of the South, Inc.*, Birmingham, Alabama; to acquire 100 percent of the voting shares of *Compass Bancshares, Inc.*, Crosby, Texas, and *Weslayan Bancshares, Inc.*, Houston, Texas, and thereby indirectly acquire *Weslayan Bank, N.A.*, Houston, Texas. Comments on this application must be received by December 11, 1987.

2. *SouthTrust Corporation*, Birmingham, Alabama; to acquire 80 percent of the voting shares of *First National Bancshares, Inc.*, Jacksonville, Florida, and thereby indirectly acquire *First National Bank of Jacksonville*, Jacksonville, Florida.

**B. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Longview Capital Corporation*, Newman, Illinois; to acquire 100 percent of the voting shares of *Chrisman Bancshare, Inc.*, Chrisman, Illinois, and thereby indirectly acquire *State Bank of Chrisman*, Chrisman, Illinois. Comments on this application must be received by December 11, 1987.

**C. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Community Bancorp, Inc.*, Manchester, Missouri; to acquire 99.77 percent of the voting shares of *First Bank of Red Bud, N.A.*, Red Bud, Illinois; 20.32 percent of the voting shares of *Winchester National Bank*, Winchester, Illinois; 99.60 percent of the voting shares of *Roodhouse National Bank*, Roodhouse, Illinois; 90.45 percent of the voting shares of *Citizens State Bank*, Pleasant Hill, Illinois; 24.97 percent of the voting shares of *Bank of Wellsville*, Wellsville, Missouri; 100 percent of the voting shares of *Three Cities Bancorp, Inc.*, Manchester, Missouri, and thereby indirectly acquire *First Bank of Chester*,

N.A., Chester, Illinois; *First Bank of Columbia, N.A.*, Columbia, Illinois; *First Bank of Carbondale*, Carbondale, Illinois; 100 percent of the voting shares of *Second Illinois Bancorp, Inc.*, Manchester, Missouri, and thereby indirectly acquire *First Bank of Fayette County*, Vandalia, Illinois; *First Bank and Trust Company in Greenville*, Greenville, Illinois; and *First Bank and Trust Company of O'Fallon*, O'Fallon, Illinois; 100 percent of the voting shares of *Third Illinois Bancorp, Inc.*, Manchester, Missouri, and thereby indirectly acquire *First Bank of Lawrence County, N.A.*, Lawrenceville, Illinois; and *First Bank of Johnston City*, Johnston City, Illinois.

2. *First Nokomis Bancorp, Inc.*, Nokomis, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of *First National Bank of Nokomis*, Nokomis, Illinois.

Board of Governors of the Federal Reserve System, November 19, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-27080 Filed 11-24-87; 8:45 am]

BILLING CODE 6210-01-M

**Deutsche Bank AG, et al.; Applications to Engage de Novo in Permissible Nonbanking Activities**

The companies listed in this notice have filed an application under § 225.23(a) (1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c) (8) of the Bank Holding Company Act (12 U.S.C. 1843(c) (8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition,



conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 10, 1987.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Deutsche Bank AG*, Frankfurt, Federal Republic of Germany; to engage *de novo* through its subsidiary Deutsche Credit Corporation, in financing, leasing, insurance and related activities and data processing, transmission, data base and bookkeeping services pursuant to § 225.25(b)(1), (b)(5), (b)(7), and (b)(8).

2. *Key Atlantic Bancorp.*, Albany, New York; to engage *de novo* through its subsidiary, Key Bank Life Insurance Ltd., Phoenix, Arizona, in underwriting, as reinsurer, of credit life and credit accident and health insurance directly related to extensions of credit by its subsidiaries pursuant to § 225.25(b)(8) of the Board's Regulation Y.

3. *KeyCorp.*, Albany, New York; Key Atlantic Bancorp., Albany, New York; and Key Bancshares of New York Inc., Albany, New York; to engage *de novo* through its subsidiary, Key Bank Life Insurance Ltd., Phoenix, Arizona, in underwriting, as reinsurer, of home mortgage redemption insurance directly related to extensions of credit by their subsidiaries pursuant to § 225.25(b)(1) of the Board's Regulation Y.

4. *KeyCorp.*, Albany, New York; Key Atlantic Bancorp., Albany, New York; and Key Bancshares of New York Inc., Albany, New York; to engage *de novo* through its subsidiary, Key Bank Life Insurance Ltd., Phoenix, Arizona, in underwriting, as reinsurer, of credit life and credit accident and health insurance directly related to extensions of credit by their subsidiaries pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

**B. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Commerce National Corporation*, Winter Park, Florida; to engage *de novo* in extensions of credit pursuant to

§ 225.25(b)(1) of the Board's Regulation Y.

2. *People National of LaFollette Financial Corporation*, LaFollette, Tennessee; to engage *de novo* through its subsidiary, First Peoples Finance, Inc., LaFollette, Tennessee, in industrial banking activities pursuant to § 225.25(b)(2) of the Board's Regulation Y. These activities will be conducted primarily in Campbell County, Tennessee, and the adjoining counties of Clairborne and Anderson.

**C. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Grenada Sunburst System Corporation*, Grenada, Mississippi; to engage *de novo* through its subsidiary, Sunburst Financial Services, Inc., Jackson, Mississippi, in making, acquiring, or servicing loans or other extensions of credit such as would be made by a consumer finance company pursuant to § 225.25(b)(1) of the Board's Regulation Y. This activity will be conducted through various offices throughout the State of Mississippi.

**D. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota, and Norwest Financial Services, Inc., Des Moines, Iowa; to engage *de novo* in making, acquiring, or servicing loans as would be made by a credit card company pursuant to § 225.25(b)(1) of the Board's Regulation Y.

**E. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Houston Bancorporation, Inc.*, Houston, Texas; to engage *de novo* in making, acquiring, and/or servicing loans for itself or for others of the type made by a mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y. Comments on this application must be received by December 9, 1987.

**F. Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *W.T.B. Financial Corporation*, Spokane, Washington; to engage *de novo* through its subsidiary, WT Investment Advisors, Inc., Spokane, Washington, in acting as an investment advisor to the extent of providing portfolio investment advice to any person, serving as an investment advisor to a registered investment company and providing financial advice to state and local government such as with respect to the issuance of their securities pursuant to § 225.25(b)(4) of

the Board's Regulation Y. These activities would be conducted within the states of Washington, Oregon, Montana and Idaho. Comments on this application must be received by December 16, 1987.

Board of Governors of the Federal Reserve System, November 19, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-27081 11-24-87; 8:45 am]

BILLING CODE 6210-01-M

### **Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Norman R. Ellis, et al.**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 10, 1987.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Norman R. Ellis, Murphysboro, Illinois*; to acquire 29.9 percent of the voting shares of City Bancorp., Inc., Murphysboro, Illinois, and thereby indirectly acquire The City National Bank of Murphysboro, Murphysboro, Illinois, and City Bank of Carbondale, Carbondale, Illinois.

**B. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Joseph J. Zilber, Milwaukee, Wisconsin*; to acquire 100 percent of the voting shares of Midwestern Banco, Inc., Milwaukee, Wisconsin, and thereby indirectly acquire Bank of Spooner, Spooner, Wisconsin.

**C. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Frederick M. Haynes, Englewood, Colorado*; to acquire 10.9 percent; *Herbert H. Maruyama, Lakewood,*



Colorado, to acquire 10.9 percent; and Richard W. Newman, Englewood, Colorado, to acquire 10.9 percent of the voting shares of Frontier Bancorporation of Denver, Inc., Denver, Inc., Denver, Colorado, and thereby indirectly acquire Frontier Bank of Denver, Denver, Colorado.

2. *Val-Cor Bancorporation, Inc. Employee Stock Ownership Plan*, Cortez, Colorado; to acquire 13.9 percent of the voting shares of Val-Cor Bancorporation, Inc., Cortez, Colorado, and thereby indirectly acquire Valley National Bank of Cortez, Cortez, Colorado.

3. *Julius F. Wall*, Clinton, Missouri; to acquire an additional 9.91 percent; and Robert S. Wheeler, Clinton, Missouri, to acquire an additional 9.91 percent of the voting shares of Calhoun Bancshares, Inc., Clinton, Missouri, and thereby indirectly acquire Citizens State Bank of Calhoun, Clinton, Missouri.

D. *Federal Reserve Bank of Dallas* (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *James C. Baker*, Sugar Land, Texas, to acquire 2.88 percent; Michael E. Aldredge, Sugar Land, Texas, to acquire 8.63 percent; William E. Ladin, Jr., Houston, Texas, to acquire 5.75 percent; W.J. Rafferty, Houston, Texas; to acquire 2.88 percent; Lynn E. Smith, Sugar Land, Texas, to acquire 2.88 percent; Walter A. & Leona F.W. Schroeder, Houston, Texas, to acquire 2.88 percent; W.H. Royal, Houston, Texas, to acquire 1.44 percent; W.C. Fancher, Sugar Land, Texas, to acquire 0.87 percent; Gaston E. Heffington, Fayetteville, Texas, to acquire 15.63 percent; Alvin Minarick, Fayetteville, Texas, to acquire 2.88 percent; Jerry F. Kubala, Fayetteville, Texas, to acquire 2.88 percent; and Richard A. Sodek, Fayetteville, Texas, to acquire 2.88 percent; of the voting shares of Fayetteville Bancshares, Inc., Fayetteville Bank, Fayetteville, Texas.

Board of Governors of the Federal Reserve System, November 19, 1987

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-27082 Filed 11-24-87; 8:45 am]

BILLING CODE 6210-01-M

### **First Bank System, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities**

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C.

1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question of whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 16, 1987.

A. *Federal Reserve Bank of Minneapolis* (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.*, Minneapolis, Minnesota; to acquire First Trust Company, Inc., St. Paul, Minnesota, and thereby indirectly engage in activities permissible pursuant to § 225.25(b)(3) of the Board's Regulation Y. These activities will be conducted by the states of Michigan, Minnesota, Montana, North Dakota, South Dakota, and Wisconsin.

Board of Governors of the Federal Reserve System, November 19, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-27083 Filed 11-24-87; 8:45 am]

BILLING CODE 6210-01-M

### **Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Franklin and Susan Gilmore, et al.**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 11, 1987.

A. *Federal Reserve Bank of Kansas City* (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Franklin S. and Susan E. Gilmore*, Carroll, Nebraska, to acquire an additional 8.34 percent; and David A. Domina, Norfolk, Nebraska, to acquire an additional 8.34 percent of the voting shares of The Carroll Bancorp, Carroll, Nebraska, and thereby indirectly acquire Farmers State Bank, Carroll, Nebraska.

B. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Steven Walker*, Encino, California; to acquire an additional 26.01 percent of the voting shares of Charter National Bancorp, Encino, California, and thereby indirectly acquire Charter National Bancorp, Encino, California, and thereby indirectly acquire Charter National Bank, Encino, California.

Board of Governors of the Federal Reserve System, November 19, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-27084 Filed 11-24-87; 8:45 am]

BILLING CODE 6210-01-M

### **National Westminster Bank PLC; Application To Engage de Novo in Permissible Nonbanking Activities**

The company listed in this notice has filed an application under § 25.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank



Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 10, 1987.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *National Westminster Bank PLC*, London, England, and *NatWest Holdings, Inc.*, New York, New York; to engage *de novo* through their subsidiary, *County NatWest International Securities, Inc.*, New York, New York, in acting as financial advisor in mortgage loan transaction pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 19, 1987

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-27085 Filed 11-24-87; 8:45 am]

BILLING CODE 6210-01-M

### **Peoples Bancorporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities**

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 11, 1987.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Peoples Bancorporation*, Rocky Mount, North Carolina; to acquire *First Finance Company of East Point, Inc.*, Atlanta, Georgia; *Downtown Finance Company*, Atlanta, Georgia; *Apex Investment*, Thomasville, Georgia; *Sun State Finance Company*, Athens, Georgia; and *Sun States Finance*

*Company of Orlando*, Orlando, Florida; and thereby engage in originating and servicing small loans to individuals; selling credit life and accident and health insurance; and other activities normally associated with the origination, servicing and collection of small loans pursuant to § 225.25(b)(1) and (b)(8) of the Board's Regulation Y.

**b. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to acquire through its wholly-owned subsidiary, *Norwest Mortgage, Inc.*, certain assets of *Numerica Financial Services, Inc.*, a corporation with offices located in Mesa, Phoenix, and Tucson, Arizona and Albuquerque, New Mexico, where it is engaged in a general mortgage banking business. Upon consummation of this transaction, *Norwest Mortgage, Inc.* will engage in such activities at the Mesa, Arizona and Albuquerque, New Mexico locations pursuant to § 225.25(b)(1) of the Board's Regulation Y. This activity will be conducted in Mesa, Arizona; Phoenix, Arizona; Tucson, Arizona; and Albuquerque, New Mexico. Comments on this application must be received by December 10, 1987.

Board of Governors of the Federal Reserve System, November 19, 1987.

James McAfee,

Associate Secretary of the board.

[FR Doc. 87-27086 Filed 11-24-87; 8:45]

BILLING CODE 6210-01-M

### **Shorebank Corp.; Application To Provide Community Economic Development Advice and Certain Management Consulting Services**

*Shorebank Corporation*, Chicago, Illinois ("Shorebank"), formerly *Illinois Neighborhood Development Corporation*, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a)(1) and (3) of the Board's Regulation Y (12 CFR 225.23(a)(1) and (3)), for prior approval to engage *de novo* through its subsidiary, *Shorebank Advisory Services, Inc.*, Chicago, Illinois ("Company"), in providing advisory and related services for a fee to community development corporations, local governments, foundations and others on community economic development issues. Shorebank proposes to have interlocking directors between itself and



those organizations to which it provides community development advice.

The Board previously has determined that bank holding companies may invest in programs designed to promote the community welfare. See § 225.25(b)(6) of Regulation Y (12 CFR 225.25(b)(6)); *Illinois Neighborhood Development Corporation*, 64 Federal Reserve Bulletin 45 (1978).

Company will also provide management consulting advice to nonaffiliated bank and nonbank depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Company will provide the proposed services on an international basis.

Section 4(c)(8) of the BHC Act provides that a bank holding company may engage in any activity which the Board has determined to be "so closely related to banking or managing or controlling banks as to be a proper incident thereto." Shorebank contends that the proposed activities meet this standard. A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n*

*v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

In determining whether an activity meets the second, or proper incident to banking test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than December 14, 1987. Any request for a hearing must, as required by section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at

the offices of the Board of Governors or the Federal Reserve Bank of Chicago.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-27087 Filed 11-24-87; 8:45 am]

BILLING CODE 6210-01-M

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of Waiting Period Under Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the *Federal Register*.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

#### TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 110987 AND 111687

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity.	PMN	Date terminated
(1) Triangle Industries, Inc., (Nelson Peltz-UPE), Tyco Laboratories, Inc., Ludlow Flexible Packaging Division	88-0133	Nov. 9, 1987.
(2) Intelogic Trace, Inc., TexCom, Inc., TexCom, Inc.	88-0222	Nov. 9, 1987.
(3) Sonora Gold Corp., Sonora Gold Corp. (70% Partner/Jamestown Mine JV P/ship), Jamestown Mine JV	88-0239	Nov. 9, 1987.
(4) American Trading and Production Corporation, Jostens, Inc., Jostens Business Products, Inc. and Hazel, Inc.	88-0144	Nov. 9, 1987.
(5) The Times Mirror Company, Diamandis Communications, Inc., Diamandis Communications, Inc.	88-0156	Nov. 10, 1987.
(6) Faber-Castell Corporation, Eberhard Faber, Inc., Eberhard Faber, Inc.	88-0157	Nov. 10, 1987.
(7) Burns, Philp & Company Limited, Fermenta AB, Fermenta Holding Company, Inc.	88-0176	Nov. 10, 1987.
(8) Brooklyn Union Gas Company, Paul Ogle Foundation, Inc., Silgas, Inc.	88-0179	Nov. 10, 1987.
(9) James Howard Guerin, Ferranti plc, Ferranti plc	88-0121	Nov. 12, 1987.
(10) Ferranti plc International Signal & Control Group PLC, International Signal & Control Group PLC	88-0122	Nov. 12, 1987.
(11) Choong Hoon Cho, Korea Exchange Bank, Korea Shipping Corporation	88-0197	Nov. 12, 1987.
(12) Courtaulds plc, Porter Paint Co., Porter Paint Co.	88-0204	Nov. 12, 1987.
(13) Itel Corporation, Chicago and North Western Transportation Company, Chicago and North Western Transportation Company	88-0094	Nov. 13, 1987.
(14) Tenneco, Inc., Berry Petroleum Company, Bush Oil Company	88-0203	Nov. 13, 1987.
(15) La Cadena Investments, Craig Corporation, Stater Bros, Inc.	88-0253	Nov. 13, 1987.
(16) Sheet Metal Workers' National Pension Fund, ACMAT Corporation, ACMAT Corporation	88-0262	Nov. 13, 1987.
(17) General Electric Company, Walbro Corporation, Walbro Corporation	88-0092	Nov. 14, 1987.
(18) John D. Kuhns, Stifel Financial Corp., Stifel Financial Corp.	88-0118	Nov. 14, 1987.
(19) Norcal Solid Waste Systems, Inc., ESOP, Envirocal, Inc., Envirocal, Inc.	88-0087	Nov. 16, 1987.
(20) Transamerica Corporation, Clarendon Group Limited, Commercial Risk Underwriters Insurance Company	88-0167	Nov. 16, 1987.
(21) Stora Kopparbergs Bergslags AB, Mohawk Paper Mills, Inc., Mohawk Paper Mills, Inc.	88-0168	Nov. 16, 1987.
(22) Ford Motor Company, Allegis Corporation, The Hertz Corporation	88-0171	Nov. 16, 1987.
(23) B/S Investments, Dallas F. Wallace, Mighty Distributing System of America, Inc.	88-0173	Nov. 16, 1987.
(24) Mesa Limited Partnership, Kendavis Holding Company, Kendavis Holding Company	88-0210	Nov. 16, 1987.
(25) Union Carbide Corporation, E. Grant Coulter, Coulter Welding Supply, Gopher Welding Supply	88-0212	Nov. 16, 1987.
(26) Broken Hill Proprietary Company Limited, Manufacturing Acquisition Associates L.P., Rheem Manufacturing Co., Rheem Puerto Rico Inc.	88-0230	Nov. 16, 1987.
(27) C. H. Beazer (Holdings) PLC, Tidewater Construction Corporation, Tidewater Construction Corporation	88-0252	Nov. 16, 1987.
(28) Crown Corporation Limited, Guinness P.L.C., Richter Brothers, Inc.	88-0263	Nov. 16, 1987.
(29) Mark B. Herman, Finevest Life Investors Limited Partnership, Finevest Life Holdings, Inc.	88-0277	Nov. 16, 1987.
(30) C.H. Beazer (Holdings) PLC, Tidewater Construction Corporation, Tidewater Construction Corporation	88-0287	Nov. 16, 1987.
(31) Hooker Corporation Limited, Sakowitz, Inc., Sakowitz, Inc.	88-0289	Nov. 16, 1987.



**FOR FURTHER INFORMATION CONTACT:**

Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 326-3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 87-27125 Filed 11-24-87; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Alcohol, Drug Abuse, and Mental Health Administration

#### Research Grants on Alcohol and Endocrinological Development in Adolescents

**AGENCY:** National Institute on Alcohol Abuse and Alcoholism, HHS.

**ACTION:** Issuance of a special program announcement for research grants on alcohol and endocrinological development in adolescents.

**SUMMARY:** The National Institute on Alcohol Abuse and Alcoholism (NIAAA) announces the availability of a special program announcement for research grants on Alcohol and Endocrinological Development in Adolescents. These awards will support research grants to study the effects of alcohol on reproductive and psychosexual development, normal growth, and brain function as they relate to endocrine function in adolescents. Areas of research interest include, but are not limited to, the etiology and pathogenesis of alcohol-induced hormone imbalance in the hypothalamic-pituitary-gonadal axis and the impact on sexual maturation and reproductive function; the nature and severity of endocrine dysfunction in relation to age drinking begins and duration of drinking; relationship between prepubertal alcohol exposure and abnormal endocrine-related psychosexual development; the influence of alcohol on bone growth and skeletal muscle development of adolescents; and the relationship between neuroendocrine modulation of neurotransmitter processes and ethanol-induced cognitive and affective impairment in adolescents. Other areas to be explored are the impact of adolescent alcohol consumption on endocrine-related regulation of the immune and digestive systems. Support may be requested for up to 5 years. It is estimated that up to \$500,000 will be available in 1988 and future years,

subject to final congressional action, to support research grants under this announcement.

**Receipt dates for applications:**

February 1, June 1, and October 1 of each year as provided by the regular research grant application schedule.

For a Copy of the Announcement Contact: The National Clearinghouse for Alcohol and Drug Information (NCADI), 6000 Executive Boulevard, Suite 402, Rockville, Maryland 20852, Telephone (301) 468-2600.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87-27095 Filed 11-24-87; 8:45 am]

BILLING CODE 4160-20-M

#### Alcohol Research Center Grants for Alcohol and Immunologic Disorders (Including Acquired Immunodeficiency Disease Syndrome—AIDS)

**AGENCY:** National Institute on Alcohol Abuse and Alcoholism, HHS.

**ACTION:** Notice of availability of funds.

**SUMMARY:** The National Institute on Alcohol Abuse and Alcoholism announces the availability of funds for the support of new Alcohol Research Centers to conduct research on the relationship between alcohol consumption and immunologic disorders, specifically including the study of the acquired immunodeficiency disease syndrome (AIDS) and human immunodeficiency virus (HIV). The research program of a Center should be interdisciplinary, conducted by scientists from the biomedical, behavioral and/or social science disciplines. The nature and mix of the research team will depend on the areas of strength of the applicant organization. The research program should include interrelated studies focusing on problems which have the potential for producing significant scientific information related to alcohol and immunologic disorders, including AIDS and HIV.

Research conducted within a Center must be clearly related to the problems of alcohol use and infectious diseases, immunologic disorders and immunosuppressive effects. A Center is expected to be a source of excellence in research and, through sustained performance, to become a significant regional or national research resource. In addition, it is expected to afford opportunities for training of persons from various disciplines and professions for research careers in alcohol and the immune system.

The purpose of the Alcohol Research Center Grants Program is to provide long-term (typically for 5 years) support for interdisciplinary research programs, to help attract the best scientists to work on research programs, to help attract the best scientists to work on research problems related to alcohol abuse and alcoholism and to provide a stable environment for such persons to engage in alcohol research in a coordinated and integrated fashion.

Any domestic public (non-Federal) or private non-profit institution may apply for a Center grant. However, the proposed Center must be affiliated with an institution, such as a university, medical center, or research center, that has the resources to sustain a long-term, coordinated research program. An applicant institution must demonstrate the ability to attract high quality scientists from biomedical, behavioral, and/or social science disciplines who are willing to make a long-term commitment to research. Women and minority investigators are encouraged to apply.

Grants to establish Alcohol Research Centers are authorized by Sections 301 and 511 of the Public Health Service Act. Regulations governing this program are contained at 42 CFR Part 54a. This program is not subject to the intergovernmental review requirements of Executive Order 12372 as implemented through HHS regulations at 45 CFR Part 100. The Catalog of Federal Domestic Assistance number for this program is 13.891.

**Receipt date and review procedures:** The submission date for applications is April 1, 1988, with final action by the National Advisory Council on Alcohol Abuse and Alcoholism in September 1988. Awards for these Centers will be issued no later than September 30, 1988.

Approximately \$1.5 million will be available in FY 1988 to establish one or more Centers with starting dates no later than September 30, 1988. Some of these funds may be made available to supplement currently funded Centers to expand their ongoing research programs. These grants are expected to range from \$300,000 to \$1,000,000 depending on the size and scope of the Center or supplement. Similar amounts are anticipated for continuation support in each of the future years; however, the amount of funds available will depend on annual appropriations. Typically, grants are awarded for a 5-year project period.

For more detailed information, prospective applicants are encouraged to contact NIAAA staff by phone at (301) 443-1273, or by writing to Dr.



Albert A. Pawlowski, Associate Director, Division of Basic Research, NIAAA, Parklawn Building, Room 14C-20, 5600 Fishers Lane, Rockville, Maryland 20857.

Donald Ian Macdonald,

*Administrator, Alcohol, Drug Abuse and Mental Health Administration.*

[FR Doc. 87-27094 Filed 11-24-87; 8:45 am]

BILLING CODE 4160-20-M

### Research Grants on Biological Determinants of Alcohol Consumption

**AGENCY:** National Institute on Alcohol Abuse and Alcoholism, HHS.

**ACTION:** Issuance of a special program announcement for research grants on biological determinants of alcohol consumption.

**SUMMARY:** The National Institute on Alcohol Abuse and Alcoholism (NIAAA) announces the availability of a special program announcement for Research Grants on Biological Determinants of Alcohol Consumption. This announcement specifically seeks grant applications on the identification of biological determinants of alcohol consumption. Knowledge of the biological factors underlying alcohol consumption will form the basis for intervention and treatment of alcoholism. Areas of research interest include, but are not limited to, the role of neuropeptides or opioids in mediating intake, maintenance and cessation of alcohol drinking; the role of physiological systemic factors as well as organ damage in modulating alcohol intake; the correlation between endocrine system modification and alcohol intake; the influence of nutritional factors on alcohol consumption patterns and the interaction of the normal mechanisms of hunger and thirst with the CNS systems controlling alcohol consumption. Finally, alcohol consumption by circadian rhythms and the interaction of excessive appetite for alcohol with the etiology of eating disorders. Support may be requested for up to 5 years. It is estimated that up to \$500,000 will be available in 1988 and future years, subject to final congressional action, to support research grants under this announcement.

**Receipt date for applications:** June 1, October 1, and February 1 of each year.

**For a copy of the announcement contact:** The National Clearinghouse for Alcohol and Drug Information (NCADI), 6000 Executive Boulevard, Suite 402,

Rockville, MD 20852, Telephone (301) 468-2600.

Donald Ian Macdonald,

*Administrator, Alcohol, Drug Abuse and Mental Health Administration.*

[FR Doc. 87-27093 Filed 11-24-87; 8:45 am]

BILLING CODE 4160-20-M

### National Institutes of Health

#### National Institute of Allergy and Infectious Diseases, Board of Scientific Counselors; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, on December 7, 8 and 9. The meeting will be held in Conference Room 428, Building 5, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public on December 7 from 9 a.m. until 12 p.m. and on December 8 from 8 a.m. until 10 a.m. During this open session, the permanent staff of the Laboratory of Infectious Diseases will present and discuss their immediate past and present research activities.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting of the Board will be closed to the public on December 7 from 8:30 a.m. until 9 a.m. and from 12 p.m. until recess, on December 8 from 10 a.m. until recess and on December 9 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personal qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John I. Gallin, Executive Secretary, Board of Scientific Counselors, NIAID, National Institutes of Health, Building 10, Room 11C103, telephone (301-496-3006), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13-301, National Institutes of Health)

Dated: November 12, 1987.

Betty J. Beveridge,

*Committee Management Officer, HHS.*

[FR Doc. 87-27088 Filed 11-24-87; 8:45 am]

BILLING CODE 4140-01-M

### National Institute of Environmental Health Sciences; Meetings

Pursuant to Public Law 92-463, notice is hereby given of meetings of the National Institute of Environmental Health Sciences.

These meetings will be open to the public to discuss administrative details or other issues relating to committee activities as indicated in the notices. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, Rm. 2B55, NIH, Bethesda, MD 20892 (301) 496-3511, will provide summaries of the meeting and rosters of council members. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of committee: Environmental Health Sciences Review Committee.

Executive Secretary: Drs. John Braun and Carol Shreffler, NIEHS, P.O. Box 12233, Research Triangle Park, N.C. 27709, Telephone: 919-541-7296.

Date of meeting: December 1-2, 1987.

Place of meeting: Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, N.C.  
Open: December 1, 9 a.m.-10:30 a.m.  
Agenda: Reports by Director, Associate Director, and Executive Secretary on Committee concerns.

Closed: December 1, 10:30 a.m. to recess; December 2, 9 a.m. to adjournment.

Closure Reason: To review, discuss and evaluate individual grant applications.

Name of committee: National Advisory Environmental Health Sciences Council.

Executive Secretary: Dr. Anne Sassaman, Associate Director, DERT,



NIEHS, P.O. Box 12233, Research Triangle Park, NC. 27709.

Date of meeting: January 25-26, 1988.

Place of meeting: Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, N.C.

Open: January 25, 9 a.m. to 12 noon.

Agenda: Discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest.

Closed: January 25, 1 p.m. to recess; January 26, 9 a.m. to adjournment.

Closure reason: To review, discuss and evaluate individual grant applications.

(Catalog of Federal Domestic Assistance Program, Nos 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: November 6, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-27089 Filed 11-24-87; 8:45am]

BILLING CODE 4140-01-M

## Public Health Service

### Drug Testing Provisions; Delegation of Authority

Notice is hereby given that in furtherance of the delegation by the Secretary of Health and Human Services on November 5, 1987, to the Assistant Secretary for Health, the Assistant Secretary for Health has delegated to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration all the authorities delegated to the Assistant Secretary for Health under sections 503(a)(1)(A) and (B) and 503(c)(1) and (2) of the Drug Testing Provisions of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, (5 U.S.C. 7301 Note), as amended hereafter. This delegation requires that in certifying agency drug testing plans the concurrence of an internal departmental Advisory Board must be obtained. It excludes the authority to promulgate regulations, submit reports to the Congress, and withhold certification of agency drug testing plans. Authority to redelegate is included other than the authority to certify agency drug testing plans.

The delegation to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration became effective on November 18, 1987.

Dated: November 18, 1987.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 87-27149 Filed 11-24-87; 8:45 am]

BILLING CODE 4160-20-M

### National Toxicology Program, Board of Scientific Counselors; Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina on December 14 and 15, 1987.

The meeting will be open to the public from 9:00 a.m. until adjournment on December 14. The preliminary agenda with approximate times are as follows:

9:00 a.m.-11:45 a.m.—Review of the Immunotoxicology Program, Division of Toxicology Research and Testing, NIEHS

12:45 p.m.-5:00 p.m.—Review of the Chemical Disposition Program, Division of Toxicology Research and Testing, NIEHS

The meeting on December 15 will be open to the public from 8:30 a.m. to 2:00 p.m. The preliminary agenda with approximate times are as follows:

8:30 a.m.-9:00 a.m.—Report of the Director, NTP

9:00 a.m.-10:00 a.m.—Patterns of Growth, Survival, and Tumor Trends in Rats and Mice from 1971-1983

10:15 a.m.-11:00 a.m.—NIEHS Dietary Restriction Studies in Rodents

11:00 a.m.-11:30 a.m.—NCTR Caloric Restriction Studies in Rodents

12:15 p.m.-2:00 p.m.—Review of Chemicals Nominated for NTP studies.

Ten chemicals will be reviewed. Six of the chemicals were evaluated by the NTP Chemical Evaluation Committee (CEC) on July 29, 1987, and are (with CAS Nos. in parentheses): (1) 1,4-Butanediol (110-63-4); (2) Carbon Disulfide (75-15-0); (3) Diethylene Glycol (111-46-6); (4) Dipropylene Glycol (25265-71-8); (5) Methylene Diphenyl Diisocyanate; and (6) Oxymetholone. Four of the chemicals were evaluated by the CEC on September 29, 1987, and are: (1) Heptachlor (76-44-8); (2) Heptachlor Epoxide (10214-57-3); (3) Ozone (10028-15-6); and (4) Primaclone (125-33-7).

In accordance with the provisions set forth in section 552b(c)(6) Title 5 U.S. Code and section 10(d) of Public Law 92-463, the meeting will be closed to the public on December 14 from 8:15 a.m. to 9:00 a.m. and on December 15 from 2:00

p.m. to 3:30 p.m. for further evaluation of research activities in the Immunotoxicology and Chemical Disposition Programs of the Systemic Toxicology Branch, including the consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Larry G. Hart, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919) 541-3971; FTS 629-3971, will have available a roster of Board members and expert consultants and other program information prior to the meeting, and summary minutes subsequent to the meeting.

Dated: November 2, 1987.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 87-27090 Filed 11-24-87; 8:45 am]

BILLING CODE 4140-01-M

## Social Security Administration

### Redelegations of Authority Under Equal Access to Justice Act

Under the Equal Access to Justice Act (EAJA), 5 United States Code 504, as reenacted and amended by Public Law 99-80 on August 5, 1985, and implementing regulations of the Department of Health and Human Services (the Department), published at 45 Code of Federal Regulations (CFR) Part 13, eligible individuals may be awarded attorney fees and other expenses when they prevail over the Department in administrative proceedings. These proceedings, which are called adversary adjudications, may result in reimbursement to involved individuals if they prevail in the proceedings and the Department's position in the proceedings was not substantially justified. A listing of Department proceedings covered by the EAJA appears at Appendix A of the implementing regulations.

When the EAJA was enacted in 1981, no Social Security Administration (SSA) proceedings were considered to be adversary adjudications. Congressional committee reports on the EAJA show that SSA's administrative process was exempted from provisions of the EAJA. Accordingly, SSA's proceedings were not included in Appendix A of the Department's EAJA regulations.

In 1982, SSA began the SSA Representative Project (SSARP) in five



hearing offices. The SSARP terminated on July 16, 1986. As in other hearing offices, Administrative Law Judges (ALJ's) assigned to offices in which the SSARP operated were responsible for conducting independent hearings and deciding appealed determinations involving benefits provisions of programs administered by SSA. Under SSARP procedures, however, an SSA representative appeared at hearings and presented SSA's position where individuals appealing an SSA determination were represented by attorneys or others. The Department and SSA took the position that these proceedings were not covered under the EAJA, as they were not truly adversarial.

In November, 1983, a Maryland State-wide class action suit (*Underdue v. Bowen*) was filed challenging the exclusion of SSARP proceedings in Maryland from those covered by the EAJA. The original EAJA expired on September 30, 1984. It was amended and reenacted effective August 5, 1985. Following reenactment of the EAJA, the Government and class counsel agreed to settle the *Underdue* case.

On May 22, 1987, a settlement agreement in *Underdue* was signed by the parties to the suit and approved by the United States District Court for the District of Maryland. Under this settlement agreement, SSA will apply the EAJA regulations, as they existed in 1983, to all persons participating in Social Security and Supplemental Security Income disability hearings held under the SSARP in Maryland, who had hearings at which an SSA representative opposed their claims and who received a favorable decision on their claims which became final on or after August 5, 1985. It was further agreed that a fund would be established for compensation of legal fees incurred during SSA appeals for such claimants who received fully favorable decisions upon their claims which became final prior to August 5, 1985.

Pursuant to the *Underdue* settlement agreement, claims from persons who received favorable decisions which became final on or after August 5, 1985 are governed by 45 CFR Part 13 (1983). Under these regulations, ALJ's take the initial action on applications for EAJA awards resulting from the settlement agreement in *Underdue* and other SSARP cases. The regulations require final Agency review of all settlements and EAJA awards. They also require Agency review if an appeal (exception) of an initial award decision is filed by either side. The Agency reviewing official for SSA is the Commissioner of

Social Security (the Commissioner) or her designee.

Notice is hereby given that, effective August 25, 1987, the Commissioner redelegated her review authority for EAJA awards under the SSARP to SSA's Associate Commissioner for Hearings and Appeals, with authority to further redelegate to other officials within SSA's Office of Hearings and Appeals (OHA). This redelegation includes authority to approve all EAJA settlements, authority to review EAJA award decisions by ALJ's and authority to make final Agency decisions based upon such reviews. The authority applies to *Underdue* cases, as well as any other cases under the SSARP. Effective October 6, 1987, the Associate Commissioner for Hearings and Appeals further redelegated this authority to the Deputy Chairman of the SSA Appeals Council, which is located in OHA.

Dated: November 13, 1987.

Nelson J. Sabatini,

Deputy Commissioner for Management.

[FR Doc. 87-27150 Filed 11-24-87; 8:45 am]

BILLING CODE 4190-11-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[PRT-721342, et al.]

#### Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

*Applicant:* James W. Foster, D.V.M., Bellevue, WA; PRT-721342.

The applicant requests a permit to import blood, serum, tissue and stool samples of mountain gorillas (*Gorilla gorilla berengei*) from Rwanda for scientific research purposes.

*Applicant:* Lowry Park Zoo, Tampa, FL; PRT-723047.

The applicant requests a permit to import one female Persian leopard (*Panthera pardus saxicolor*) from the Tierpark Zoo, Munich, West Germany, for enhancement of the propagation of the species.

*Applicant:* Dr. Earl T. Holdsworth, Falmouth, ME; PRT-723068.

The applicant requests a permit to import a trophy of a bonebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mrs. C.P. Human of Modderivlei farm in Bredasporp, Republic of South Africa, for the purpose of enhancement of survival of the species.

*Applicant:* International Crane Foundation, PRT-723090.

The applicant requests a permit to import a male black-necked crane (*Grus nigricollis*) from the Chendu Zoo, Sichuan Province, China, for enhancement of the propagation of the species.

*Applicant:* Ken McConnell, Red Bluff, CA; PRT-723100.

The applicant requests a permit to import 10 golden conures (*Aratinga guarouba*) captive-hatched by Kees Van Dijk, Schilde, Belgium, for enhancement of the propagation of the species.

*Applicant:* Delta Primate Research Center, Covington, LA; PRT-719320.

The applicant requests a permit to collect (take) blood, serum and skin samples from 45 white-collared mangabeys (*Cercocebus torquatus*) for leprosy research. Thirty-two of these animals are inoculated with leprosy (*Mycobacterium leprae*).

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 400, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Dated: November 19, 1987.

R.K. Robinson

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87-27160 Filed 11-24-87; 8:45 am]

BILLING CODE 4310-55-M

[FES 87-62]

#### Availability of Final Environmental Impact Statement; Innoko National Wildlife Refuge, AK

**AGENCY:** Fish and Wildlife Service, Department of the Interior.

**ACTION:** Notice of availability of a final environmental impact statement for the proposed comprehensive plan and wilderness review for Innoko National Wildlife Refuge, Alaska.

**SUMMARY** The U.S. Fish and Wildlife Service has prepared a Final Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review (Plan) for the Innoko



National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1), 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969. The Plan describes three alternatives for managing the refuge as well as the environmental consequences of implementing each alternative. In the document the suitability of all federal lands in the refuge, not previously designated as wilderness lands, is reviewed for possible wilderness designated and inclusion in the National Wilderness Preservation System.

**DATES:** A Record of Decision will be issued no sooner than December 2, 1987.

**FOR FURTHER INFORMATION CONTACT:** William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

**SUPPLEMENTARY INFORMATION:** A summary of the Plan has been prepared and will be sent to all persons and organizations who participated in any part of the planning process, such as scoping meetings, workshops, or in other types of communication with the planning team. Copies of the complete Plan will be sent to Federal and State agencies, regional and village Native corporations, local governments, and other organizations and individuals who have already requested copies. A limited number of copies of both documents are available upon request from Mr. Knauer.

Copies of the complete Plan are available at the office of the Regional Director, at the above address; at the Innoko National Wildlife Refuge Office, P.O. Box 69, McGrath, Alaska 99627; and, for review, at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, U.S. Department of the Interior Bldg., 18th & C Streets, NW., Washington, DC 20240

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 NE Multnomah Street, Suite 1692, Portland, OR 97232

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Avenue, SW., Room 1306, Albuquerque, NM 87103

U.S. Fish and Wildlife Service, Refuges and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111

U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, GA 30303

U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 70, Newton Corner, MA 02158  
U.S. Fish and Wildlife Service, Refuges and Wildlife, 134 Union Blvd., Lakewood, CO 80225

Date: November 19, 1987.

**Bruce Blanchard,**

*Director, Office of Environmental Project Review.*

[FR Doc. 87-27155 Filed 11-24-87; 8:45 am]

**BILLING CODE 4310-55-M**

**[FES 87-61]**

#### **Availability of Final Environmental Impact Statement; Yukon Flats National Wildlife Refuge, AK**

**AGENCY:** Fish and Wildlife Service, Department of the Interior.

**ACTION:** Notice of availability of a final environmental impact statement for the proposed Comprehensive Conservation Plan and Wilderness Review for Yukon Flats National Wildlife Refuge, Alaska.

**SUMMARY:** The U.S. Fish and Wildlife Service has prepared a Final Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review (Plan) for the Yukon Flats National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1), 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969. The Plan describes five alternatives for managing the refuge as well as the environmental consequences of implementing each alternative. In the document the suitability of all Federal lands in the refuge is reviewed for possible wilderness designation and inclusion in the National Wilderness Preservation System.

**DATE:** A Record of Decision will be issued no sooner than December 28, 1987.

**FOR FURTHER INFORMATION CONTACT:** William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

**SUPPLEMENTARY INFORMATION:** A summary of the Plan has been prepared and will be sent to all persons and organizations who participated in any part of the planning process, such as scoping meetings, workshops, or in other types of communication with the planning team. Copies of the complete Plan will be sent to all those who responded to the draft and to all Federal and State agencies, regional, and village

Native corporations, local governments, and other organizations and individuals who have already requested copies. A limited number of copies of both documents are available upon request from Mr. Knauer.

Copies of the complete Plan are available at the office of the Regional Director, at the above address; at the Yukon Flats National Wildlife Refuge Office, Federal Building and Courthouse, Room 122, 101 Twelfth Ave., Fairbanks, Alaska 99701; and for review, at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, U.S.

Department of the Interior Bldg., 18th & C Streets, NW., Washington, DC 20240

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 NE Multnomah Street, Suite 1692, Portland, OR 97232

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Avenue, SW., Room 1306, Albuquerque, NM 87103

U.S. Fish and Wildlife Service, Refuges and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111

U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, GA 30303

U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 70, Newton Corner, MA 02158

U.S. Fish and Wildlife Service, Refuges and Wildlife, 134 Union Blvd., Lakewood, CO 80225

Date: November 19, 1987.

**Bruce Blanchard,**

*Director, Office of Environmental Project Review.*

[FR Doc. 87-27156 Filed 11-24-87; 8:45 am]

**BILLING CODE 4310-55-M**

#### **Bureau of Land Management**

**[AZ-050-08-4212-10]**

#### **Realty Action; Proposed Noncompetitive Agricultural Leases on Public Land in Yuma County, AZ, and Riverside County, CA**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action; proposed noncompetitive agricultural leases on public land in Yuma County, Arizona, and Riverside County, California.

**SUMMARY:** The following described lands have been determined to be suitable for noncompetitive 5-year renewable agricultural leases under the provisions of section 302 of the Federal



**Land Policy and Management Act of 1976 (43 U.S.C. 1732):**

Portions of lots 11, 13, SE $\frac{1}{4}$ SE $\frac{1}{4}$ , sec. 19, T. 8 S., R. 22 W., G&SRM, Arizona, containing 24.2 acres (A-22620).

S $\frac{1}{2}$ , sec. 35, T. 10 S., R. 25 W., G&SRM, Arizona, containing 34 acres (A-23090).

Portion of SW $\frac{1}{4}$ SE $\frac{1}{4}$ , sec. 24, T. 8 S., R. 23 W., G&SRM, Arizona, containing 14 acres (A-23091).

Portion of sec. 29, T. 16 S., R. 22 E., SBM, Arizona, containing 27 acres (A-23092).

N $\frac{1}{2}$ , sec. 35, T. 10 S., R. 25 W., G&SRM, Arizona, containing 13.22 acres (A-23093).

Lot 2, N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$ , sec. 35, T. 8 S., R. 22 E., SBM, California, containing 14.7 acres (CA-20934).

The lands have been utilized in trespass for agricultural purposes for many years. Continued agricultural use of these lands is consistent with the Yuma District Resource Management Plan and Environmental Impact Statement.

These parcels will be offered to the current occupants for a district, noncompetitive agricultural lease at no less than fair market value rental. The size and location of the parcel limit other potential uses or users. The leases will be subject to all valid existing rights.

**DATES:** For a period of 45 days from the date of publication of this Notice, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 5680, 3150 Winsor Avenue, Yuma, Arizona 85364. Any objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior, effective 60 days from the date of publication of the *Federal Register*.

**FOR FURTHER INFORMATION CONTACT:** Sue E. Richardson, Area Manager, Yuma Resource Area, Bureau of Land Management, 3150 Winsor Avenue, Yuma, Arizona 85365, 602-726-6300.

Dated: November 16, 1987.

Robert V. Abbey,

Acting District Manager.

[FR Doc. 87-27135 Filed 11-24-87; 8:45 am]

BILLING CODE 4310-32-M

[CA-940-08-4212-13; CA 20258]

**California; Exchange of Public and Private Lands in Riverside and San Diego Counties and Order Providing For Opening of Public Land**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of issuance of land exchange conveyance document and opening order.

**ADDRESS:** Inquiries concerning the land should be addressed to: Chief, Branch of Adjudication and Records, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E-2841), Sacramento, California 94825.

**SUMMARY:** The purpose of this exchange was to acquire a portion of the non-Federal land within the proposed 13,030-acre preserve for the Coachella Valley fringe-toed lizard. The lizard is Federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6,700 acres within the preserve. The land acquired does not constitute habitat for the lizard, but provides a sand source required for the continuing production of active sand dune areas that are critical habitat for the lizard. Other State and Federal agencies will acquire the remaining portion for the preserve.

The public interest was well served through completion of this exchange. The land acquired in this exchange will be opened to operation of the public land laws and to the full operation of the United States mining and mineral leasing laws.

**FOR FURTHER INFORMATION CONTACT:** Dianna Storey, California State Office, (916) 978-4815.

1. The United States issued a land exchange conveyance document to The Nature Conservancy on October 15, 1987, pursuant to the authority of Sec. 206 of the Act of October 21, 1976 (43 U.S.C. 1716) for the following described public land:

San Bernardino Meridian, California

T. 11 S., R. 1 W.,

Sec. 29, lot 14;

Sec. 31, lot 6;

Sec. 32, lots 8, 9, 11, 12, and 13.

Containing 76.56 acres in San Diego County.

2. In exchange for the land described in paragraph 1, on October 14, 1987, the United States accepted title to the following described private land from The Nature Conservancy:

San Bernardino Meridian, California

T. 4 S., R. 7 E.,

Sec. 8, S $\frac{1}{2}$ SW $\frac{1}{4}$ .

Containing 80 acres in Riverside County.

3. The values of the Federal public land and the non-Federal private land in the exchange were appraised at \$78,000 and \$76,000, respectively. A payment in the amount of \$2,000 has been paid to the United States by The Nature

Conservancy to equalize the values between the public land and the non-Federal private land.

4. At 10 a.m. on December 24, 1987, the land described above in paragraph 2 shall be open to operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on December 24, 1987 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. At 10 a.m. on December 24, 1987, the land described in paragraph 2 above shall be open to location under the United States mining laws. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of opening is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

6. At 10 a.m. on December 24, 1987 the land described in paragraph 2 above shall be open to applications and offers under the mineral leasing laws.

Date: November 17, 1987.

Rose M. Fairbanks,

Acting Chief, Branch of Adjudication and Records.

[FR Doc. 87-27077 Filed 11-24-87; 8:45 am]

BILLING CODE 4310-40-M

[NM-030-07-4212-14]

**Sale of Public Lands in Socorro County, NM**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Modified notice of realty action.

**SUMMARY:** This Notice withdraws the sale of Parcel 86-10 described in our previous Notice of Realty Action published in the *Federal Register* on September 17, 1987, in Volume 52, No. 180, pages 35152 through 35154. The reason for withdrawal of the sale is due to adverse comments received from New Mexico Department of Game and Fish. The sale of all other parcels remains unchanged.



**FOR FURTHER INFORMATION CONTACT:**

Rocky Curnutt at the Socorro Resource Area Office, 198 Neel Avenue, NW., Socorro, New Mexico 87801 or call 505-835-0412.

Dated: November 18, 1987.

Robert R. Calkins,

*Associated District Manager.*

[FR Doc. 87-27132 Filed 11-24-87; 8:45 am]

BILLING CODE 4310-FB-M

**Minerals Management Service**

[FES 87-63]

**Alaska Region; Availability of Final Environmental Impact Statement for Proposed Chukchi Sea Lease Sale 109**

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service (MMS) has prepared a final Environmental Impact Statement (EIS) relating to the proposed 1988 Outer Continental Shelf oil and gas lease sale of available unleased blocks in the Chukchi Sea.

Single copies of the final EIS can be obtained from the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99508-4302. Attention: Public Information. Copies can also be requested by telephone, (907) 261-4435.

Copies of the final EIS will also be available for inspection in the following public libraries: Arctic Environmental Information and Data Center, University of Alaska, 707 A Street, Anchorage, Alaska; Army Corps of Engineers Library, U.S. Department of Defense, Anchorage, Alaska; Alaska Resources Library, U.S. Department of the Interior, Anchorage, Alaska; University of Alaska, Anchorage Consortium Library, 3211 Providence Drive, Anchorage, Alaska; Fairbanks North Star Borough Public Library (Noel Wien Library), 1215 Cowles Street, Fairbanks, Alaska; Elmer E. Rasmuson Library, 310 Tanana Drive, Fairbanks, Alaska; Alaska State Library Juneau, Alaska; Alaska Field Operation Center Library, U.S. Department of the Interior, Bureau of Mines, Juneau, Alaska; Juneau Memorial Library, 114-4th Street, Anchorage, Alaska; Kenai Community Library, 163 Main Street Loop, Kenai, Alaska; University of Alaska-Juneau Library, 11120 Glacier Highway, Juneau, Alaska; Kettleson Memorial Library, Sitka, Alaska; Soldotna Public Library, 235 Binkley Street, Soldotna, Alaska; Alakanuk Public Library, Alakanuk, Alaska; North

Slope Borough School District Library/Media Center, Barrow, Alaska; Brevig Mission Community Library, Brevig Mission, Alaska; Buckland Public Library, Buckland, Alaska; Davis Menadelook Memorial H.S. Library, Diomed, Alaska; Elim Community Library, Elim, Alaska; Northern Alaska Environmental Center Library, 218 Driveway, Fairbanks, Alaska; University of Alaska, Fairbanks, Institute of Arctic Biology, 311 Irving Building, Fairbanks, Alaska; Gambell Community Library/Learning Center, Gambell, Alaska; Golovin Community Library, Golovin, Alaska; Kanealook School Library, Kaktovik, Alaska; Kiana Elementary School Library, Kiana, Alaska; McQueen School Library, Kivalina, Alaska; George Francis Memorial Library, Kotzebue, Alaska; Kyuk City Library, Koyuk, Alaska; Kegoayah Kozga Public Library, Nome, Alaska; Noorvik Elementary/High School Library, Noorvik, Alaska; Tikigaq Library, Point Hope, Alaska; Savoonga Community Library, Savoonga, Alaska; Shaktolik School Library, Shaktolik, Alaska; Nellie Weyiouanna Ilisaavik Library, Shishmaref, Alaska; Stebbins Community Library, Stebbins, Alaska; Ticasuk Library, Unalakleet, Alaska; Kingikme Public Library, Wales, Alaska; and Nuiqsut Library, Nuiqsut, Alaska.

Wm. D. Bettenberg,

*Director, Minerals Management Service.*

Approved:

Date: November 20, 1987.

Bruce Blanchard,

*Director, Office of Environmental Project Review.*

[FR Doc. 87-27147 Filed 11-24-87; 8:45 am]

BILLING CODE 4320-MR-M

**National Park Service****Intention To Negotiate Concession Authorization; Dudley Food and Beverage, Inc.**

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession authorization with Dudley Food and Beverage, Inc., authorizing it to continue to provide the sale of refreshments, sundries and beach equipment rentals, as authorized by concession permit, for the public in the Santa Rosa area of Gulf Islands National Seashore for a period

of approximately four (4) years from the date of execution through February 28, 1992.

This authorization has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on March 31, 1988, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the authorization.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated. Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta Georgia 30303, for information as to the requirements of the proposed authorization.

Robert L. Deskins,

*Acting Regional Director, Southeast Region.*

[FR Doc. 87-27151 Filed 11-24-87; 8:45 am]

BILLING CODE 4310-10-M

**INTERNATIONAL TRADE COMMISSION**

[Investigation No. 337-TA-272]

**Certain Electronic Chime Modules; Initial Determination Terminating Respondents on Basis of Settlement Agreement**

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Modu-Tronics Inc. and Aimco, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the



Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 17, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

**Written Comments:** Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

**FOR FURTHER INFORMATION CONTACT:** Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Issued: November 17, 1987.

**Kenneth R. Mason,**  
Secretary.

[FR Doc. 87-27199 Filed 11-24-87; 8:45 am]

BILLING CODE 7020-02-M

#### [Investigation No. 337-TA-269]

#### **Certain Picture-in-a-Picture Video Add-On Products and Components Thereof; Initial Determination Terminating Respondents on Basis of Settlement Agreement**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement:

Rabbit Systems, Inc. ("Rabbit"), General Electronics (Hong Kong) Ltd. ("GEHK") and MultiVision Products, Inc. ("MultiVision").

**SUPPLEMENTARY INFORMATION:** This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 4, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

**Written Comments:** Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

**FOR FURTHER INFORMATION CONTACT:** Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Issued: November 19, 1987.

**Kenneth R. Mason,**  
Secretary.

[FR Doc. 87-27200 Filed 11-24-87; 8:45 am]

BILLING CODE 7020-02-M

#### [Investigation No. 731-TA-354 (Final)]

#### **Stainless Steel Pipes and Tubes From Sweden**

#### **Determinations**

On the basis of the record<sup>1</sup> developed in the subject investigation, the Commission determines,<sup>2</sup> pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673(b)), that an industry in the United States is materially injured by reason of imports from Sweden of seamless stainless steel pipes, tubes, hollow bars, and blanks therefor, all the foregoing of circular cross section, provided for in items 610.51 and 610.52 of the Tariff Schedules of the United States (TSUS), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines<sup>3</sup> that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Sweden of welded stainless steel pipes, tubes, hollow bars, and blanks therefor, all of the foregoing of circular cross section, provided for in TSUS items 610.37 and 610.52, that have been found by the Department of Commerce to be sold in the United States at LTFV.

#### **Background**

The Commission instituted this investigation effective May 2, 1987, following a preliminary determination by the Department of Commerce that imports of certain stainless steel hollow products from Sweden were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. (1673)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 1, 1987 (52 FR 24537). The hearing was held in Washington, DC, on October 13, 1987.

<sup>1</sup> The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR (207.2(i))).

<sup>2</sup> Chairman Liebler determines that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry is not materially retarded, by reason of imports from Sweden of seamless stainless steel pipes and tubes that have been found by the Department of Commerce to be sold at less than fair value.

<sup>3</sup> Commissioners Eckes and Lodwich determine that an industry in the United States is materially injured by reason of imports from Sweden of welded stainless steel pipes and tubes that have been found by the Department of Commerce to be sold in the United States at LTFV.



and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 18, 1987. The views of the Commission are contained in USITC Publication 2033 (November 1987), entitled "Stainless Steel Pipes and Tubes from Sweden: Determination of the Commission in Investigation No. 731-TA-354 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: November 19, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-27201 Filed 11-24-87; 8:45 am]

BILLING CODE 7020-02-M

### Certain Welded Carbon Steel Pipes and Tubes From India; Request for Comments

**AGENCY:** United States International Trade Commission.

**ACTION:** Request for comments regarding the institution of a section 751(b) review investigation concerning the Commission's affirmative determination in investigation No. 731-TA-271, Certain Welded Carbon Steel Pipes and Tubes from India.

**SUMMARY:** The Commission invites comments from the public on whether changed circumstances exist sufficient to warrant the institution of an investigation pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) to review the Commission's affirmative determination in investigation No. 731-TA-271 (Final), regarding certain welded carbon steel standard pipes and tubes from India. The purpose of the proposed 751(b) review investigation, if instituted, would be to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of certain welded carbon steel standard pipes and tubes from India if the antidumping duty order regarding such merchandise were to be modified or revoked.<sup>1</sup>

<sup>1</sup> The term "welded carbon steel standard pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, 0.375 inch or more but not over 16 inches in outside diameter, provided for in items 610.3231, 610.3234, 610.3242, 610.3243, 610.3252, 610.3254m, 610.3256, 610.3258, and 610.4925 of the Tariff Schedules of the United States Annotated (TSUSA).

### FOR FURTHER INFORMATION CONTACT:

Robert Carpenter (202-523-0399), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-523-0161.

**SUPPLEMENTARY INFORMATION:** On May 7, 1986, the Commission published in the *Federal Register* its determination in investigation No. 731-TA-271 (Final), Certain Welded Carbon Steel Pipes and Tubes from India (51 FR 16908). The Commission determined that an industry in the United States was materially injured, or threatened with material injury, by reason of imports from India of welded carbon steel standard pipes and tubes which had been found by the Department of Commerce to be sold at less than fair value. On May 12, 1986, the Department of Commerce issued an antidumping duty order, notice of which was published in the *Federal Register* (51 FR 17384).

On October 5, 1987, the Commission received a request filed by the Engineering Export Promotion Council of India, the Tata Iron and Steel Co. (TISCO), Ltd., and Jindal Pipes, pursuant to section 751(b) of the Act, to review its affirmative determination in investigation No. 731-TA-271 (Final). Under § 207.45(a) of the Commission's Rules of Practice and Procedure, "In the absence of good cause shown, no investigation under this section shall be instituted within 24 months of the date of publication of the notice of suspension or determination." Notice of the Commission's determination was published in the *Federal Register* of May 7, 1986. The petitioners contend that the circumstances of this case constitute "good cause" for conducting an immediate review.

**Written Comments Requested:** Pursuant to § 207.45(b)(2) of the Commission's Rules of Practice and Procedure (19 CFR 207.45(b)(2)), the Commission requests comments concerning whether the following alleged changed circumstances are sufficient to warrant institution of a review investigation: The domestic industry experienced dramatic recovery in 1986 as the result of factors which preceeded, and are therefore unrelated to, imposition of the antidumping duties.

Also, the volume of imports from India declined during the first six months of 1987, despite the fact that two Indian producers of standard pipes and tubes are excluded from the dumping order. Thus, there is no evidence that the domestic industry would suffer material injury if the antidumping duty order with respect to India were revoked.

The Commission also invites comment on the meaning of "good cause". In particular, comments on the differences between "changed circumstances" and "good cause" are sought. The petitioners have cited the following items as support for a finding of "good cause": The subject antidumping duty order has become unnecessary and unwarranted as a result of the Commission's negative determinations in investigations Nos. 731-TA-293 and 294, Certain Welded Carbon Steel Pipes and Tubes from the Philippines and Singapore (November 1986). In reaching its determinations in those cases, the Commission cumulated imports from India with those from the Philippines and Singapore, as well as with those from Turkey and Thailand. Thus the Commission again assessed the effect of imports from India on the domestic industry and concluded that they were not the cause of material injury to the domestic industry. Secondly, two major companies, accounting for over 30 percent of all exports of the subject products from India to the United States, were found not to be dumping and are thus excluded from Commerce's order. Given the Commission's negative determinations in investigations Nos. 731-TA-293 and 294, the burden of the duty on TISCO, Jindal, and all other Indian companies vis-a-vis the two excluded companies is inappropriate and constitutes "good cause."

**Written Submissions:** In accordance with § 201.8 of the Commission's rules (19 CFR 201.8), the signed original and 14 copies of all written submissions must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436. All comments must be filed no later than 30 days after the date of publication of this notice in the *Federal Register*. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request business confidential treatment under § 201.6 of the Commission's rules (19 CFR 201.6). Such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Each sheet must be clearly



marked at the top "Confidential Business Data." The Commission will either accept the submission in confidence or return it. All nonconfidential written submissions will be available for public inspection in the Office of the Secretary.

Copies of the request for review of the injury determination and any other documents in this matter are available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission; telephone 202-523-0161.

By order of the Commission.

Issued: November 16, 1987.

Kenneth R. Mason,  
Secretary.

[FR Doc. 87-27202 Filed 11-24-87; 8:45 am]

BILLING CODE 7020-02-M

## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31147]

### Fremont, West Point and Pacific Railway, Inc.; Exemption, Operation, Certain Abandoned Railroad Lines Owned by Eastern Nebraska Chapter, National Railway Historical Society in Dodge and Cuming Counties, NE

The Fremont, West Point and Pacific Railway, Inc., has filed a notice of exemption to operate certain abandoned railroad lines owned by the Eastern Nebraska Chapter of the National Railway Historical Society between Fremont, NE, and West Point, NE. The line consists of 37.5 route miles between milepost 1.5 at Fremont, NE, and milepost 39.0 at West Point, NE. Comments must be filed with the Commission and served on William C. Harsh, Jr., 324 Fourth Street NE, Washington, DC 20002.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 30, 1987.

By the Commission, Jane F. Mackall,  
Director, Office of Proceedings.

Noreta R. McGee,  
Secretary.

[FR Doc. 87-26777 Filed 11-24-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-31 (Sub-No. 25X)]

### Grand Trunk Western Railroad Co.; Exemption; Abandonment and Discontinuance of Trackage Rights in Fayette, Ross and Pike Counties, OH

**AGENCY:** Interstate Commerce  
Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, (1) the abandonment by the Grand Trunk Western Railroad Company of a 22.47-mile line, and (2) the discontinuance of trackage rights by the Grand Trunk Western Railroad Company over 54.22 miles of line owned by CSX Transportation, Inc. and Norfolk and Western Railway Company in Fayette, Ross and Pike Counties, OH, subject to standard labor protective conditions.

**DATES:** This exemption will be effective on December 25, 1987. Petitions to stay must be filed by December 10, 1987, and petitions for reconsideration must be filed by December 21, 1987.

**ADDRESSES:** Send pleadings referring to Docket No. AB-31 (Sub-No. 25X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; (2) Petitioner's representative: Robert I. Schellig, Jr., 131 West LaFayette Boulevard, Detroit, MI 48226.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired (202) 275-1721].

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357/4359 (D.C. Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: November 18, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simons. Commissioner Simmons was absent and did not participate in the disposition of this decision.

Noreta R. McGee,  
Secretary.

[FR Doc. 87-27056 Filed 11-24-87; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree; Bi-Con Services, Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 17, 1987 a proposed Consent Decree in *United States v. Bi-Con Services, Inc., et al.*, Civil Action No. 87-0004-C(K) as lodged with the United States District Court for the Northern District of West Virginia. The proposed Consent Decree concerns violations of the National Emission Standard for Hazardous Air Pollutants ("NESHAPs") for asbestos. 40 CFR Part 61. The proposed Consent Decree requires defendants Bi-Con Services, Inc., Equitable Resources, Inc. and William C. Stalder to comply with the provisions of the asbestos NESHAP. Further, Defendants Bi-Con and Equitable will pay a civil penalty of \$20,000.00.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Bi-Con Services, et al.*, D.J. Ref. No. 90-5-2-1-1003.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Northern District of West Virginia, Room 243, Federal Building, 1125 Chaplin Street, Wheeling, West Virginia 26003 and at the Region III, Office of the United States Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania 19107. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$1.70 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,  
Acting Assistant Attorney General Land and  
Natural Resources Division.

[FR Doc. 87-27130 Filed 11-24-87; 8:45 am]

BILLING CODE 4410-01-M



**Lodging of Second Amended Consent Decree; Shenango Inc.**

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 3, 1987, a proposed Second Amended Consent Decree in *United States v. Shenango Incorporated*, C.A. 80-1172, was lodged with the United States District Court for the Western District of Pennsylvania. The Amended Consent Decree was lodged with the Court on April 9, 1987.

The Second Amended Consent Decree modifies the Amended Consent Decree by requiring Shenango to construct a new particulate emission control system at its Neville Island facility.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Second Amended Consent Decree. Comments shall be addressed to the Assistant Attorney General of the Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States v. Shenango Incorporated*, DOJ ref. 90-5-2-3-1099.

The proposed Second Amended Consent Decree may be examined at the office of the United States Attorney, J. Alan Johnson, 633 U.S. Post Office and Courthouse, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania 15219 and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania, 19107. Copies of the Amended Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the U.S. Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Second Amended Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$1.60 (10 cent a page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

*Acting Assistant Attorney General Land and Natural Resources Division.*

[FR Doc. 87-27129 Filed 11-24-87; 8:45 am]

BILLING CODE 4410-01-M

**NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES****Agency Information Collection Activities Under OMB Review**

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Comments on this information collection must be submitted on or before February 1, 1988.

**ADDRESSES:** Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0233) or Elaina Norden, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202-395-7316).

**FOR FURTHER INFORMATION CONTACT:**

Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0233) from whom copies of forms and supporting documents are available.

**SUPPLEMENTARY INFORMATION:** All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

**Category:** New

**Title:** The NEH Teacher-Scholar Program For Elementary and Secondary Teachers Guidelines

**Form Number:**

**Frequency of Collection:** Collections occur once yearly, according to individual program application deadline.

**Respondents:** Individual or households Academic scholars—teachers, administrators.

**Use:** The Guidelines and application instructions provide direction for preparing narrative and budgetary

parts of applications for grant funds and request additional information regarding grants recently received by applicants.

*Estimated Number of Respondents:* 1500

*Estimated Hours for Respondents to*

*Provide Information:* 6000

Susan Metts,

*Director of Administration.*

[FR Doc. 87-27143 Filed 11-24-87; 8:45 am]

BILLING CODE 7536-01-M

**NATIONAL SCIENCE FOUNDATION****Task Force on Women, Minorities and The Handicapped in Science and Technology; Meeting and Public Hearing**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the task force followed by a public hearing on December 1, 1987.

**Meeting**

**Name:** Task Force on Women, Minorities, and the Handicapped in Science and Technology.

**Date:** December 1, 1987.

**Time:** 7:30 a.m. to 9:15 a.m.

**Place:** Mag Conference Center, Midwest Research Institute, 425 Volker Blvd., Kansas City, MO 64110.

**Type of Meeting:** Open.

**Purpose:** The purpose of The Task Force on Women, Minorities and the Handicapped is to: Examine the current status of women, minorities and the disabled in science and engineering positions in the Federal government and in federally assisted research programs; coordinate existing Federal programs designed to promote the employment of women, minorities and physically disabled scientists and engineers; suggest cooperative interagency programs for promoting such employment; identify exemplary programs in the state, local or private sectors; and develop a long-range plan to advance opportunities for women, minorities, and disabled persons in science and technology.

**Agenda:** Reports will be heard on progress of the subcommittees on Employment, Research, Higher Education, Precollege Education, and Social Aspects, as well as other business of the task force.

**Public Hearing**

**Name:** Task Force on Women, Minorities, and the Handicapped in Science and Technology.

**Date:** December 1, 1987.

**Time:** 9:30 a.m. to 4:45 p.m.



*Place:* Mag Conference Center, Midwest Research Institute, 425 Volker Blvd., Kansas City, MO 64110.

*Purpose:* The task force will seek testimony from interested parties on innovative ways to increase opportunities for women, minorities and the handicapped in science and technology in the areas of employment, research, higher education, precollege education, and social aspects.

Testimony will be heard in three ways: (1) Scheduled testimony of ten-minute summary presentations accompanied by longer written statements and supporting documents for the record; (2) summary statements from the floor of 3-minute duration accompanied by any longer written statements or materials for the record; and (3) written testimony submitted to the task force offices from those who cannot be heard because of time constraints or those who cannot attend.

Anyone wishing to testify or submit a statement for the record should write Sue Kemnitzer, Executive Director, Task Force on Women, Minorities, and the Handicapped in Science and Technology, 330 C. Street, SW, Washington, DC 20201.

All meetings and public hearings of the task force are open to the public and all proceedings will be recorded and will be available at the task force offices.

*Reason for Late Notice:* Through administrative error (but through no fault on the part of the Program Office) this notice was delayed in being published.

M. Rebecca Winkler,  
Committee Management Officer.  
[FR Doc. 87-27253 11-24-87; 8:45 am]  
BILLING CODE 7555-01-M

## NATIONAL TRANSPORTATION SAFETY BOARD

### Public Hearing in New Orleans, LA; Hazardous Materials Accident

In connection with its investigation of the accident involving the tank car fire and spill of butadiene at Gentilly Railyard, New Orleans, Louisiana, on September 9, 1987, the National Transportation Safety Board will convene a public hearing at 9:30 a.m. (local time), on December 14, 1987, in the Poydras Rooms A and B of the Hyatt-Regency Hotel, located at 500 Poydras Plaza, New Orleans, Louisiana. For more information contact Rachel Halterman, Office of Government and Public Affairs, National Transportation Safety Board, 800 Independence

Avenue, SW., Washington, DC 20594, telephone (202) 382-6600.

Bea Hardesty,  
Federal Register Liaison Officer.  
November 20, 1987.

[FR Doc. 87-27154 Filed 11-24-87; 8:45]  
BILLING CODE 7533-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-302]

### Florida Power Corp.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-72, issued to Florida Power Corporation (the licensee), for operation of the Crystal River Unit 3 Nuclear Generating Plant located in Citrus County, Florida.

The amendment would (1) change the current Technical Specification (TS) section 4.5.1.d by deleting the requirement to verify each core flooding tank isolation valve closed alarm by an actuation test and replace it with a requirement to perform a channel calibration of each alarm, and (2) add to TS bases 3/4.5.1 a description of the actuation of the core flooding tank isolation valve closed alarm.

The amendment would be in response to the licensee's application for amendment dated April 15, 1987. Because of administrative error within the Commission in not noticing this amendment earlier, insufficient time now exists for the Commission's usual 30-day notice without extending the current refueling shutdown.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3)

involve a significant reduction in a margin of safety.

To demonstrate that the core flooding tanks are operable, the TS surveillance requirement 4.5.1.d presently requires verification, at least once per 18 months, that each core flooding tank isolation valve closed alarm actuates whenever each core flooding tank isolation valve is not fully open and the Reactor Coolant System (RCS) pressure exceeds 750 psig.

If an alarm should fail to actuate, the action statement requires that the inoperable tank be restored to operable status within one hour or that the reactor be in HOT SHUTDOWN (Mode 4) within the next 12 hours. In the event the alarm should fail to actuate and shutdown continues per the action statement, or the 18 month surveillance interval elapses during a shutdown, the surveillance is difficult to satisfy since TS Section 4.0.4 then prohibits entry into HOT STANDBY (Mode 3). Although a test in Mode 4 at 750 psig is possible, such a test is not recommended because it takes the reactor close to the RCS pressure/temperature limits. Normally, the licensee performs this surveillance test during cooldown.

The channel calibration proposed for this surveillance requirement is an equivalent test of the core flood tank isolation alarm; the calibration will be done by applying pressure to the pressure sensing diaphragm over the range from 0 to 2200 psig while moving the isolation valve, with the RCS pressure safely below pressure/temperature limits. The licensee will continue to perform the actuation test by moving the isolation valves with the RCS pressure above 750 psig, during cooldown, but not as part of the surveillance requirement. In addition, a channel calibration is consistent with the same type of tests performed for other engineered safeguards actuation instrument channels and for the reactor protection instrument channels.

The TS bases will also be changed to describe the actuation of the core flooding tank isolation valve closed alarm.

Based on the above, this amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the alarm channel will be tested to assure operability in an acceptable manner consistent with tests performed for other engineered safeguards actuation and reactor protection instrument channels.

2. Create the possibility of a new or different kind of accident from any



accident previously evaluated because the change does not modify the plant or require a significantly different plant equipment configuration.

3. Involve a significant reduction in the margin of safety because the change will not revise the channel setpoint. The margin of safety relative to RCS pressure/temperature limits will be increased as discussed above.

Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice.

Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 10, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a

notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding

the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Offices of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the



Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 15, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room, Crystal River Library, 668 NW. First Avenue, Crystal River, Florida 32629.

Dated at Bethesda, Maryland, this 20th day of November, 1987.

For The Nuclear Regulatory Commission.

Harley Silver,

*Project Manager, Project Directorate II-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 87-27208 Filed 11-24-87; 8:45 am]

BILLING CODE 7590-01-M

## PRESIDENTIAL COMMISSION ON THE HUMAN IMMUNODEFICIENCY VIRUS EPIDEMIC

### Meeting

Notice is hereby given, pursuant to Pub. L. 92-463, that the Presidential Commission on the Human Immunodeficiency Virus Epidemic will hold a public meeting on Thursday, December 10 and Friday, December 11, 1987, 9:00 a.m. to 5:00 p.m. in the Auditorium of the Cohen Building (formerly the HHS North Building), 330 Independence Avenue, SW., C Street Entrance, Washington, DC.

The purpose of the meeting is to allow representatives of public and private organizations to address the Presidential Commission on the prevalence and anticipated spread of the HIV infection through its various stages. Particular emphasis will be on the potential economic consequences of the HIV infection. Agenda items are subject to change as priorities dictate.

Records shall be kept of all Commission proceedings and shall be available for public inspection at 655-15th Street, NW., Suite 901, Washington, DC 20005. For further information please contact (202) 376-2206.

Polly L. Gault,

*Executive Director.*

[FR Doc. 87-27209 Filed 11-24-87; 8:45 am]

BILLING CODE 4160-15-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25135; File No. SR-NYSE-87-35]

### Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, U.S.C. 78s(b)(1), notice is hereby given that on October 21, 1987, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has established the fees set forth below for its new service known as "Super DOT PC Products". These fees will become effective immediately on filing with the Commission.

##### "PC DOT" Single Terminal Subsystem

First System—\$1,000 one-time software charge

Second System—500 one-time software charge

Third and Additional Systems—250 one-time software charge

Systems Software Update Fee—500 per annum for each system

##### "PC DOT Fallback"/"PC Multi-Terminal" Subsystems

First System—\$20,000 one-time software charge

Second System—10,000 one-time software charge

Third and Additional Systems—5,000 one-time software charge

System Software Update Fee—300 per annum for each system

##### "List Processing" Subsystem

Per System—\$1,000 one-time software charge

System Software Update Fee—1,300 per annum for each system

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change

and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below and is set forth in Section A, B and C below.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange has developed a new service known as "Super DOT PC Products", which consists of four subsystems. The four subsystems are: (i) "PC DOT Single Terminal"; (ii) "PC DOT Fallback/PC Multi-Terminal"; (iii) "List Processing"; and (iv) "Electronic Mail". These are services provided to the member firm community by the Exchange. It intends to charge the fees listed above for the first three services, but provide "Electronic Mail" at no cost to subscribers. These four software services are described as follows:

##### "PC DOT/Single Terminal" Subsystem

Subscribers to the Super DOT System gain access to the System by one of three means. They can: (a) Connect their own computer-based message-switching and order-processing system to the Exchange's Common Message Switching (CMS) System; (b) rent or purchase a terminal from a vendor of such devices and connect it to the CMS; or (c) employ a service bureau to send its order and report traffic through CMS.

Some 58 member firms currently interface with Super DOT via rented or purchased terminals. These terminals are relatively expensive and can be used for no other purpose than to interface with Super DOT.

The Exchange has developed a software package that member firms can use with a personal computer (PC) of their choice that not only can send orders through Super DOT, but perform after-hours functions as well. Since it can be used for other functions besides interfacing with Super DOT, it has appeal to those firms which have limited order flow and cannot justify the cost for a terminal that can be used for only one purpose.

##### "PC Fallback"/"PC DOT Multi-Terminal" Subsystem

There are about 35 member firms and service bureaus that interface with Super DOT via computer. For many years, firms have expressed an interest in a computerized fall-back system that will enable them to access CMS when their own systems fail. The availability of such a system has become more important in recent years with increased



reliance on Super DOT. For most of these firms, the only back-up system available is to telephone orders to their booth spaces on the Trading Floor and have them hand-written by their telephone clerks—a process that is less efficient and places additional burdens on busy personnel.

By using a personal computer, in conjunction with software available from the Exchange, firms can connect into CMS and send their order to Super DOT, and receive execution reports. Each PC can support up to eight input terminals. Depending on a particular firm's order flow, more than one system may be needed. Of course, when not used in the back-up mode, the PCs can be used for other purposes, both during and outside of trading hours.

In addition, this system can be used by those firms who do not have their own computer interface but whose order flow warrants more than one input terminal for order entry.

#### "List Processing" Subsystem

List processing services were initiated as a pilot program by the Exchange in September, 1985. There are currently 16 member firms on line. By using the Exchange's software package, a member firm can connect a PC to the Super DOT System via CMS. This software enables firms to pre-load and maintain up to 200 lists of stocks traded on the Exchange of up to 500 market orders per list, and quickly direct them to the Trading Floor through Super DOT. Reports of execution are received on a report printer or PC in their offices within minutes of execution and are automatically submitted to trade comparison on a locked-in basis.

#### "Electronic Mail" Subsystem

When Super DOT subscribers inquire as to the status of unexecuted orders, the price or number of shares of executed orders, or other matters of an administrative nature, they may telephone the Exchange's DOT Service Desk located on the Trading Floor. During periods of heavy activity, there can be a delay in reaching an Exchange employee. The Exchange proposes to provide, at no cost for software, the ability to communicate with the DOT Service Desk via a PC. The inquiries will appear on a printer at the Service Desk, where they will be removed by an Exchange employee, taken to the Trading Post on the Floor, and the answer sent back to the member firm.

The statutory basis for the proposed rule change is Section 6(b)(4) under the Securities Exchange Act of 1934 requiring that a national securities exchange have rules that provide for the

equitable allocation of reasonable dues, fees, and other charges among its members.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited comments on the proposed rule change and no unsolicited comments have been received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 16, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan Katz,  
Secretary.

November 18, 1987.

[FR Doc. 87-27161 Filed 11-24-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16136; 812-6824]

#### BVPS Funding Corporation, Application

November 18, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 ("the 1940 Act").

*Applicant:* BVPS Funding Corporation.  
*Relevant 1940 Act Sections:*  
Exemption requested under section 6(c) from all provisions of the 1940 Act.

*Summary of Application:* Applicant seeks an order to permit it to assist Ohio Edison Company ("Ohio Edison") in the financing and refinancing of property through leveraged lease financing transactions in which Ohio Edison will be the lessee.

*Filing date:* The application was filed on August 11, 1987 and amended on November 18, 1987.

*Hearing of Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC, by 5:30 p.m., on December 9, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1209 Orange Street, Wilmington, Delaware 19801.

**FOR FURTHER INFORMATION CONTACT:** Richard Pfordte, Special Counsel, (202) 272-2811 or Karen Skidmore, Special Counsel, (202) 272-3023 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the



SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

#### Applicant's Representations

1. Applicant is a Delaware corporation and all of its shares of common stock are owned by Corporate Trinity Company ("CTC"), a company controlled by The Corporation Trust Company ("CT"). There has been, and Applicant undertakes that in the future there will be, no public offering of Applicant's common stock or of any other equity security. There is, and in the future will be, no class of equity securities of Applicant other than its common stock. Applicant has been created to participate as lender in one or more leveraged lease transactions ("Lease Transactions"), in which Ohio Edison, an Ohio corporation, is the lessee ("Lessee"). Ohio Edison will make an initial determination as to whether or not the debt portion of such leveraged lease transaction will be funded through the Applicant's sale of one or more series of its debt securities with differing maturities ("Lease Bonds").

2. Applicant's sole purpose is to assist Ohio Edison in the financing and refinancing<sup>1</sup>, in whole or in part, of Ohio Edison's 41.88% undivided ownership interest (directly or through its beneficial interest in an energy trust) in Beaver Valley Power Station Unit No. 2 ("Unit 2"), a nuclear generating station located on the Ohio River at Shippingport, Pennsylvania. Pursuant to an Operating Agreement relating to, among other things, Unit 2, Duquesne Light Company, a Pennsylvania utility, is authorized to act as agent for the other companies, including Ohio Edison, entitled to the capacity of and energy from Unit 2, and has responsibility and control over construction, operation and maintenance of Unit 2. Rights under such Operating Agreement relating to the undivided interests being financed and refinanced by Ohio Edison will be assigned to the Lessors (referred to below) and reassigned for the benefit of the holders of Lessor Notes (as hereinafter defined).<sup>2</sup> Although Unit 1 was financed in a similar manner by Ohio Edison, it will not be refinanced using the Applicant.

3. Applicant's participation as lender in the Lease Transactions will be limited to making loans pursuant to a Loan and

Security Agreement or a Trust Indenture and Security Agreement (in either case, a "Lease Indenture") to certain lessors ("Lessors") under the leases forming a part thereof ("Leases") which will be payable primarily from rentals and other payments by the Lessee. Initially the Lessor under each Lease will be a bank or trust company, incorporated and doing business within the United States of America and having a combined capital and surplus of at least \$50,000,000, acting as trustee for one or more beneficiaries pursuant to a trust agreement entered into exclusively for the purpose of the lease financing. Under such trust agreement, any successor trustee must be a bank or trust company incorporated and doing business within the United States of America and having a combined capital and surplus of at least \$50,000,000. A portion of the purchase price of the property owned by the Lessors and leased to the Lessee ("Leased Property") will be paid by the beneficiaries of the grantor trust that acts as Lessor and that amount will constitute their equity investment in the Leased Property. (See paragraph 15 below.) The loans by Applicant will be without recourse to the general credit of the Lessors or their respective beneficiaries, and will be evidenced by non-recourse obligations of the respective Lessors ("Lessor Notes").

4. Under each Lease, the Lessee will be obligated to make rental payments sufficient to pay principal of the premium, if any, and interest on the Lessor Notes issued in connection therewith. Such obligations of the Lessee will be required to be absolute and unconditional, without right of counterclaim, setoff, deduction or defense. CTC and CT have entered into an agreement with Ohio Edison pursuant to which CTC and CT have agreed to cause Applicant to make loans to one or more Lessors designated by Ohio Edison from time to time and Ohio Edison, as is customary in such transaction, has agreed to provide certain indemnifications to CTC and CT with respect to such participations.

5. The funds necessary for the purchase of the Lessor Notes will be acquired through the issuance by Applicant of its debt securities ("Lease Bonds"), in one or more series with differing maturities which will be secured on a parity basis by a first lien on, and a security interest in, all of the assets of Applicant, consisting primarily of the Lessor Notes so acquired and previously acquired and which may include a lien on or security interest in the Leased Property. Lessor Notes held by applicant will consist only of Lessor Notes issued in connection with any

Leases to which Ohio Edison is a party, as Lessee, relating to its ownership interest (directly or through their beneficial interest in an energy trust) in Unit 2.

6. All Lease Bonds will be issued under a common indenture and a separate supplemental indenture for each series (collectively, the "Collateral Trust Indenture") which will establish the terms of the Lease Bonds of that series.

It is expected that the trustee under the Collateral Trust Indenture ("Trustee") will be a bank or trust company not affiliated with any of the Lessors. At each lease closing involving the financing of the debt portion of the purchase price of the Leased Property through the issuance of Lease Bonds, the Lessor Notes will be pledged and assigned directly to the Trustee. Applicant expects that the Lessor Notes will be offered and sold under circumstances making such transactions exempt from the registration requirements under the Securities Act of 1933 ("Securities Act").

7. The Lease Indentures will set forth the terms and conditions under which the Lessor Notes will be issued. Each Lease Indenture will require the Lessor to grant to the Applicant (if the Lease Indenture is a Loan and Security Agreement) or a trustee under the Lease Indenture ("Lease Indenture Trustee") (if the Lease Indenture is a Trust Indenture and Security Agreement), an assignment of rents, including basic rentals and certain other payments, to be made by the Lessee under the applicable Lease. The Lease Indenture Trustee or the Applicant may have a lien on, or security interest in, the Leased Property. The Lessor will covenant that, so long as any Lessor Note is outstanding, it will not incur any other debt not constituting Lessor Notes or otherwise in connection with the Leased Property, and except for certain limited permitted liens, it will not create any lien on or security interest in such property. Thus, these two covenants combined ensure that if a Lessor defaults on a Lessor Note, the Leased Property will be available to satisfy the claims of the Trustee, acting for the benefit of Lease Bondholders. Applicant will be precluded from purchasing any Lessor Note unless (i) such Lessor Note is issued in respect of Leased Property having a fair market sales value at the time of purchase at least equal to 110% of the original principal amount of such Lessor Note, or (ii) such Lessor Note and all other Lessor Notes (if any) issued by the relevant Lessor are issued in respect of Leased Property having an aggregate fair market value (measured, in each case, as of the date such Leased

<sup>1</sup>Applicant believes any refinancing will be undertaken infrequently and that every representation concerning the Lease Bonds will apply to each and every series irrespective whether such series of Lease Bonds refunds a prior series.

<sup>2</sup>Applicant represents that Ohio Edison has received all regulatory approvals necessary for the consummation of the Lease Transactions.



Property was first financed under the Lease) at least equal to 110% of the original principal amount of such Lessor Note and such other Lessor Notes. Further, each Lease Indenture will include as events of default, without limitation: (a) Payment defaults on the Lessor Notes issued thereunder, and (b) certain events of default under the related Lease.

8. The various series of Lease Bonds will have terms which may differ as to interest rates, sinking fund obligations of Applicant, the right of Applicant to redeem such Lease Bonds and other matters. The interest rates, maturities and principal amounts of each series of Lease Bonds will be established based on prevailing market conditions, thereby giving Applicant flexibility to take advantage of changing market conditions. If the maturity dates and cash flow of the Lessor Notes exceed the cash requirements of Applicant's obligations under the Lease Bonds, the resulting funds ("Temporary Funds") will be invested by Applicant in certain investments ("Permitted Investments"), in each case maturing at such time as necessary to pay Applicant's obligations under the Lease Bonds. The Lease Bonds, which may include commercial paper and intermediate-term and long-term obligations, will be issued in private placements pursuant to section 4(2) of, or in underwritten public offerings registered under, the Securities Act, or possibly in distributions exempt from registration because they will come to rest outside the United States (provided that the Lease Bonds are offered and sold outside the United States and to non-U.S. persons without registration under the Securities Act in reliance upon an opinion of U.S. counsel that registration is not required and that no single offering of Lease Bonds both within and outside the United States will be made without registration of all such Lease Bonds under the Securities Act without first obtaining a no-action letter permitting such offering or otherwise complying with applicable standards then governing such offerings). In all such cases, Applicant will adopt agreements and procedures reasonably designed to prevent such Lease Bonds from being offered or sold in the United States or to U.S. persons (except as U.S. counsel may then advise is permissible).

9. The initial issuance of Lease Bonds will be through an underwritten public offering of one or more series having an aggregate principal amount of approximately \$640 million (assuming a total sales price for Ohio Edison's interest in Unit 2 of \$800 million).

Although Ohio Edison will not be the actual issuer of the Lease Bonds, it will be considered the "issuer" thereof for purposes of the Securities Act. Any registration statement filed under the Securities Act relating to the Lease Bonds will name Ohio Edison as the sole registrant and will be signed on behalf of Ohio Edison as the sole registrant by such officers and directors of Ohio Edison as may be required under the Securities Act and the rules, regulations and forms of the Commission thereunder. Accordingly, the provisions of section 11 of the Securities Act will apply to Ohio Edison.

10. Applicant will assign and pledge to the Trustee under the Collateral Trust Indenture, as security for the payment of the principal of and premium, if any, and interest on all Lease Bonds, the Lessor Notes and other assets held by the Applicant. Each such Lessor Note will in turn be secured by the assigned rentals and other assigned payments under such Lease and may be secured by the Leased Property. The Trustee will give immediate notice to the Lease Bondholders of any rights granted by the Collateral Trust Indenture to it, which will include the right to exercise voting powers in respect of the Lessor Notes, to give any consents or waivers with respect thereto or to exercise any rights and remedies in respect thereof. The Collateral Trust Indenture will authorize the Lease Bondholders to direct, by notice to the Trustee within a specific period of time, that it take any action or cast any vote in its capacity as a holder of the Lessor Notes. As a result of this pass-through voting mechanism, the rights and remedies of Lessor Noteholders will be exercisable directly by the Lease Bondholders through their fiduciary the Trustee. The principal amount of Lessor Notes directing any action or being voted for or against any proposal will be the principal amount of the Lease Bondholders taking the corresponding position. To the extent the Trustee does not receive instruction, it will take such action with respect to the Lessor Notes as a prudent man would in the care of his own property.

11. In the event Ohio Edison defaults in the payment of that portion of rent necessary to pay all amounts due and payable in respect of the Lessor Notes, the Applicant or the Lease Indenture Trustee, as the case may be, would have the right to exercise, concurrently with the exercise by the lessor under the applicable Lease of any remedies available to it under such Lease, all of the rights and remedies against Ohio Edison provided in the related Lease. The exercise of such rights and remedies

would be at the direction of the Lease Bondholders through the Trustee's instructions to the Lease Indenture Trustee or as pledgee of the Applicant's interest in such Lease Indenture.

12. Among the rights and remedies of a holder of Lessor Notes included under the Lease Indenture is the right to demand, after a specified grace period, that Ohio Edison pay all unpaid basic rent plus a stipulated amount which, in all cases, will be sufficient to pay the principal of and premium, if any, and interest on the related Lessor Notes. Amounts payable by Ohio Edison under the Leases, to the extent of the amount of the principal of and premium, if any, and interest on the relevant Lessor Notes, will be paid directly to the Trustee for distribution to the Lease Bondholders. Therefore, the Lease Bondholders will have access under the Collateral Trust Indenture and the Lease Indentures to the credit of Ohio Edison. Moreover, the Lease Bondholders will be entitled to realize on the security afforded by the security interest created by the Lease Indenture in an amount up to the aggregate unpaid amount of the relevant Lessor Notes secured by such security interest. The combination of the Lessor Notes and the obligation to Ohio Edison under the Leases, grants holders of Lease Bonds access to the general credit of Ohio Edison and is thus the functional equivalent of a guaranty by Ohio Edison. The Lessor Notes and the Lease Indenture will provide that, upon the occurrence of certain casualty events, termination events, deemed loss events, special loss events or certain other events, either (i) Ohio Edison shall assume the obligations represented by the Lessor Notes, or (ii) Ohio Edison shall purchase from the beneficiaries of the trusts issuing the Lessor Notes the beneficial interest in such trusts and the Lessors will grant a lien on and security interest in the Leased Property to secure the Lessor Notes. The assumption or purchase described in the preceding sentence will be in partial satisfaction of Ohio Edison's obligation to make payments required of it upon early termination of the Leases in consequence of any such event. The preservation of the right of Ohio Edison to assume the Lessor Notes in certain circumstances permits Ohio Edison to avoid an accelerated obligation to prepay the Lessor Notes under provisions of the Leases.

13. The issue, sale and delivery of a particular series of Lease Bonds may be effected, at maximum, two months prior to the date for the consummation of the Leases ("Leases Closing Date") applicable to the Leased property



financed with the Lease Bond proceeds. Pending the Lease Closing Date, the net proceeds of the Lease Bonds will be held by the Trustee, pursuant to the terms of the Collateral Trust Indenture. The Trustee may invest proceeds in Permitted Investments, which include direct obligations of the United States or obligations fully guaranteed by the United States, certificates of deposit issued by or banker's acceptances of, or time deposits with, banks organized under United States law and limited to amounts of less than \$15 million in principal at any one time and from any one bank, or commercial paper of companies incorporated in or doing business under the laws of the United States or one State, in an amount not exceeding \$15 million in principal amount at any one time from any one company. The commercial paper will also have the highest rating by a nationally recognized rating organization. Permitted Investments also include repurchase agreements, fully collateralized by the Permitted Investments, pursuant to which a United States bank, trust company or national banking association having a net worth of at least \$200 million is obligated to repurchase the obligation not later than 90 days after its purchase.

14. Except to the extent payable from the proceeds of refunding the Lease Bonds, or the proceeds of the initial issuance of the Lease Bonds, where the relevant Lease Closing Date does not occur simultaneously, due to the non-recourse nature of Lessor Notes and the limited scope of Applicant's activities, payment of the principal of and premium, if any, and interest on the Lease Bonds will be made exclusively from amounts paid by the Lessee under the Leases.

15. It is expected that the Lessors will be grantor trusts formed exclusively for the purpose of lease financing. The original beneficiaries of such grantor trust may be a single sophisticated institutional investor, or under limited circumstances, a single or indirect subsidiary of Ohio Edison acting in its individual capacity or, a limited partnership composed of one or more partners, each of whom will be a sophisticated investor. All such beneficial interests and partnership interests will be offered and sold in transactions not involving a public offering within the meaning of section 4(2) of the Securities Act. Subsequent transfers of such beneficial interests may be made only to a transferee which is a financial institution, a corporation or partnership, a majority in interest in which is composed of one or more

financial institutions or corporations, and in no event shall such transfer violate the Securities Act. Applicant believes that these restrictions, when considered in light of the nature of leveraged lease transactions, effectively preclude all but the most sophisticated investors from being a transferee. The nature and availability of the tax benefits of the beneficial interest, the legal and regulatory framework of the transactions and the complex financial analysis required assure that only sophisticated institutional investors will be potential transferees of beneficial interests in the Lessor. Moreover, Applicant represents that any sale and leaseback transaction as described in the application consummated on or after October 1, 1987, (excluding therefore, the Lease Transactions already consummated as described in the application) will contain limitations designed to ensure that both the original beneficiary of each grantor trust acting as Lessor and each transferee thereof will be a sophisticated investor.

#### **Applicant's Legal Conclusions**

Applicant's proposed activities are appropriate in the public interest because the proposed issuance of Lease Bonds would provide a convenient mechanism for Ohio Edison to obtain access to segments of the debt capital market other than the institutional private placement market. An exemption would be consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because, among other things, investors will be protected under the proposed arrangements to the same extent as under equivalent arrangements where the 1940 Act is inapplicable.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,  
Secretary.

[FR Doc. 87-27118 Filed 11-24-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16135; 812-6826]

#### **CTC Beaver Valley Funding Corporation; Application**

November 18, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("the 1940 Act").

*Applicant:* CTC Beaver Valley Funding Corporation.

#### **Relevant 1940 Act Sections:**

Exemption requested under section 6(c) from all provisions of the 1940 Act.

**Summary of Application:** Applicant seeks an order to permit it to assist The Toledo Edison Company ("Toledo") and The Cleveland Electric Illuminating Company ("Cleveland") in the financing and refinancing of property through leveraged lease financing transactions in which they will be co-lessees.

**Filing date:** The application was filed on August 11, 1987, and amended on November 18, 1987.

**Hearing or Notification of Hearing:** If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 9, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1209 Orange Street, Wilmington, Delaware 19801.

**FOR FURTHER INFORMATION CONTACT:** Richard Pfordte, Special Counsel, (202) 272-2811 or Karen L. Skidmore, Special Counsel, (202) 272-3023 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

#### **Applicant's Representatives**

1. Applicant is a Delaware corporation and all of its shares of common stock are owned by Corporate Trinity Company ("CTC"), a company controlled by The Corporation Trust Company ("CT"). There has been, and Applicant undertakes that in the future there will be, no public offering of Applicant's common stock or of any other equity security. There is, and in the future will be, no class of equity securities of Applicant other than its common stock. Applicant has been created to participate as lender in one or more leveraged lease transactions ("Lease Transactions"), in which



Toledo, an Ohio corporation, and Cleveland, an Ohio corporation, are the co-lessees (in such capacities, collectively "Lessee"). Toledo and Cleveland will be jointly and severally obligated under the leases described below. Toledo and Cleveland are both wholly-owned subsidiaries of Centenor Energy Corporation ("Centenor"), an Ohio corporation that is an exempt public utility holding company under section 3(a)(1) of the Public Utility Holding Company Act of 1935. Centenor will make an initial determination as to whether or not the debt portion of such leveraged lease transaction will be funded through the Applicant's sale of one or more series of its debt securities with differing maturities ("Lease Bonds").

2. Applicant's sole purpose is to assist Toledo and Cleveland in the financing and refinancing,<sup>1</sup> in whole or in part, of Toledo's 19.91% and/or Cleveland's 24.47% undivided ownership interest (directly or through beneficial interests in an energy trust) in Beaver Valley Power Station Unit No. 2 ("Unit 2"), a nuclear generating station located on the Ohio River at Shippingport, Pennsylvania. Pursuant to an Operating Agreement relating to, among other things, Unit 2, Duquesne Light Company, a Pennsylvania utility, is authorized to act as agent for the other companies, including Centenor, entitled to the capacity of and energy from Unit 2, and has responsibility and control over construction, operation and maintenance of Unit 2. Rights under such Operating Agreement relating to the undivided interests being financed and refinanced by Toledo and Cleveland will be assigned to the Lessors (referred to below) and reassigned for the benefit of the holders of Lessor Notes (as hereinafter defined).<sup>2</sup> Although Unit 1 was financed in a similar manner by Toledo and Cleveland, it will not be refinanced by Applicant.

3. Applicant's participation as lender in the Lease Transactions will be limited to making loans pursuant to a Loan and Security Agreement or a Trust Indenture and Security Agreement (in either case, a "Lease Indenture") to certain lessors ("Lessors") under the leases forming a part thereof ("Leases") which will be payable primarily from rentals and other payments by the Lessee. Initially the

Lessor under each Lease will be a bank or trust company, incorporated and doing business within the United States of America and having a combined capital and surplus of at least \$50,000,000, acting as trustee for one or more beneficiaries pursuant to a trust agreement entered into exclusively for the purpose of the lease financing. Under such trust agreement, any successor trustee must be a bank or trust company incorporated and doing business within the United States of America and having a combined capital and surplus of at least \$50,000,000. A portion of the purchase price of the property owned by the Lessors and leased to the Lessee ("Leased Property") will be paid by the beneficiaries of the grantor trust that acts as Lessor and that amount will constitute their equity investment in the Leased Property. (See paragraph 15 below). The loans by Applicant will be without recourse to the general credit of the Lessors or their respective beneficiaries, and will be evidenced by non-recourse obligations of the respective Lessors ("Lessor Notes").

4. Under each Lease, the Lessee will be obligated to make rental payments sufficient to pay principal of and premium, if any, and interest on the Lessor Notes issued in connection therewith. Such obligations of the Lessee will be required to be absolute and unconditional, without right of counterclaim, setoff, deduction or defense. CTC and CT have entered into an agreement with Toledo and Cleveland pursuant to which CTC and CT have agreed to cause Applicant to make loans to one or more Lessors designated by Toledo and Cleveland from time to time and they have agreed to provide certain indemnifications to CTC and CT with respect to such participation.

5. The funds necessary for the purchase for the Lessor Notes will be acquired through the issuance by Applicant of its debt securities ("Lease Bonds"), in one or more series with differing maturities which will be secured on a parity basis by a first lien on and a security interest in, all of the assets of Applicant, consisting primarily of the Lessor Notes so acquired and previously acquired and which may include a lien on or security interest in the Leased Property. Lessor Notes held by Applicant will consist only of Lessor Notes issued in connection with any Leases to which Toledo and Cleveland are parties, as Lessee, related to their ownership interest (directly or through their beneficial interest in any energy trust) in Unit 2.

6. All Lease Bonds will be issued under a common indenture and a separate supplemental indenture for each series (collectively, the "Collateral Trust Indenture") which will establish the terms of the Lease Bonds of that series. It is expected that the trustee under the Collateral Trust Indenture ("Trustee") will be a bank or trust company not affiliated with any of the Lessors and will not be a trustee under any indenture of Centenor or its subsidiaries. At each lease closing involving the financing of the debt portion of the purchase price of the Leased Property through the issuance of Lease Bonds, the Lessor Notes will be pledged and assigned directly to the Trustee. Applicant expects that the Lessor Notes will be offered and sold under circumstances making such transactions exempt from the registration requirements under the Securities Act of 1933 ("Securities Act").

7. The Lease Indentures will set forth the terms and conditions under which the Lessor Notes will be issued. Each Lease Indenture will require the lessor to grant to the applicant (if the Lease Indenture is a Loan and Security Agreement) or a trustee under the Lease Indenture ("Lease Indenture Trustee") (if the Lease Indenture is a Trust Indenture and Security Agreement), an assignment of rents, including basic rentals and certain other payments, to be made by the Lessee under the applicable Lease. The Lease Indenture Trustee or the Applicant may have a lien on, or security interest in, the Leased Property. The Lessor will covenant that, so long as any Lessor Note is outstanding, it will not incur any other debt not constituting Lessor Notes or otherwise in connection with the Leased Property, and except for certain limited permitted liens, it will not create any lien on or security interest in such property. Thus, these two covenants combined ensure that if a Lessor defaults on a Lessor Note, the Leased Property will be available to satisfy the claims of the Trustee, acting for the benefit of Lease Bondholders. Applicant will be precluded from purchasing any Lessor Note unless (i) such Lessor Note is issued in respect of Leased Property having a fair market sales value at the time of purchase at least equal to 110% of the original principal amount of such Lessor Note, or (ii) such Lessor Note and all other Lessor Notes (if any) issued by the relevant Lessor are issued in respect of Leased Property having an aggregate fair market value (measured, in each case, as of the date of such Leased Property was first financed under the Lease) at least equal to 110% of the

<sup>1</sup> Applicant believes any refinancing will be undertaken infrequently and that every representation concerning the Lease Bonds will apply to each and every series irrespective whether such series of Lease Bonds refunds a prior series.

<sup>2</sup> Applicant represents that Toledo and Cleveland have received all regulatory approvals necessary for the consummation of the Lease Transactions.



original principal amount of such Lessor Note and such other Lessor Notes. Further, each Lease Indenture will include as events of default, without limitation: (a) Payment defaults on the Lessor Notes issued thereunder, and (b) certain events of default under the related Lease.

8. The various series of Lease Bonds will have terms which may differ as to interest rates, sinking fund obligations of Applicant, the right of Applicant to redeem such Lease Bonds and other matters. The interest rates, maturities and principal amounts of each series of Lease Bonds will be established based on prevailing market conditions, thereby giving Applicant flexibility to take advantage of changing market conditions. If the maturity dates and cash flow of the Lessor Notes exceed the cash requirements of Applicant's obligations under the Lease Bonds, the resulting funds ("Temporary Funds") will be invested by Applicant in certain investments ("Permitted Investments"), in each case maturing at such time as necessary to pay Applicant's obligations under the Lease Bonds. The Lease Bonds, which may include commercial paper and intermediate-term and long-term obligations, will be issued in private placements pursuant to section 4(2) of, or in underwritten public offerings registered under, the Securities Act, or possibly in distributions exempt from registration because they will come to rest outside the United States (provided that the Lease Bonds are offered and sold outside the United States and to non-U.S. persons without registration under the Securities Act in reliance upon an opinion of U.S. counsel that registration is not required and that no single offering of Lease Bonds both within and outside the United States will be made without registration of all such Lease Bonds under the Securities Act without first obtaining a no-action letter permitting such offering or otherwise complying with applicable standards then governing such offerings). In all such cases, Applicant will adopt agreements and procedures reasonably designed to prevent such Lease Bonds from being offered or sold in the United States or to U.S. persons (except as U.S. counsel may then advise is permissible).

9. The initial issuance of Lease Bonds will be through an underwritten public offering of one or more series having an aggregate principal amount of approximately \$400 million (assuming a total sales price of Toledo's interest in Unit 2 of \$500 million). Although neither Toledo nor Cleveland will be the actual issuer of the Lease Bonds, they will be

considered the "issuer" thereof for purposes of the Securities Act. Any registration statement filed under the Securities Act relating to the Lease Bonds will name Toledo and Cleveland as the joint registrants and will be signed on behalf of Toledo and Cleveland as the joint registrants by such officers and directors of them as may be required under the Securities Act and the rules, regulations and forms of the Commission thereunder. Accordingly, the provisions of section 11 of the Securities Act will apply to Toledo and Cleveland.

10. Applicant will assign and pledge to the Trustee under the Collateral Trust Indenture, as security for the payment of the principal of and premium, if any, and interest on all Lease Bonds, the Lessor Notes and other assets held by the Applicant. Each such Lessor Note will in turn be secured by the assigned rentals and other assigned payments under such Lease and may be secured by the Leased Property. The Trustee will give immediate notice to the Lease Bondholders of any rights granted by the Collateral Trust Indenture to it, which will include the right to exercise voting powers in respect of the Lessor Notes, to give any consents or waivers with respect thereto or to exercise any rights and remedies in respect thereof. The Collateral Trust Indenture will authorize the Lease Bondholders to direct, by notice to the Trustee within a specific period of time, that it take any action or cast any vote in its capacity as a holder of the Lessor Notes. As a result of this pass-through voting mechanism, the rights and remedies of Lessor Noteholders will be exercisable directly by the Lease Bondholders through their fiduciary the Trustee. The principal amount of Lessor Notes directing any action or being voted for or against any proposal will be the principal amount of the Lease Bondholders taking the corresponding position. To the extent the Trustee does not receive instruction, it will take such action with respect to the Lessor Notes as a prudent man would in the care of his own property.

11. In the event Toledo or Cleveland defaults in the payment of that portion of rent necessary to pay all amounts due and payable in respect of the Lessor Notes, the Applicant or the Lease Indenture Trustee, as the case may be, would have the right to exercise, concurrently with the exercise by the Lessor under the applicable Lease of any remedies available to it under such Lease, all of the rights and remedies against Toledo and Cleveland provided in the related Lease. The exercise of such rights and remedies would be at

the direction of the Lease Bondholders through the Trustee's instructions to the Lease Indenture Trustee or as pledgee of the Applicant's interest in such Lease Indenture.

12. Among the rights and remedies of a holder of Lessor Notes included under the Lease Indenture is the right to demand, after a specified grace period, that Toledo and Cleveland pay all unpaid basic rent plus a stipulated amount which, in all cases, will be sufficient to pay the principal of and premium, if any, and interest on the related Lessor Notes. Amounts payable by Toledo and Cleveland under the Leases, to the extent of the amount of the principal of and premium, if any, and interest on the relevant Lessor Notes, will be paid directly to the Trustee for distribution to the Lease Bondholders. Therefore the Lease Bondholders will have access under the Collateral Trust Indenture and the Lease Indentures to the credit of Toledo and Cleveland. Moreover, the Lease Bondholders will be entitled to realize on the security afforded by the security interest created by the Lease Indenture in an amount up to the aggregate unpaid amount of the relevant Lessor Notes secured by such security interest. The combination of the Lessor Notes and the obligation of Toledo and Cleveland under the Leases, grant holders of Lease Bonds access to the general credit of Toledo and Cleveland and is thus the functional equivalent of a guaranty by them. The Lessor Notes and the Lease Indenture will provide that, upon the occurrence of certain casualty events, termination events, deemed loss events, special loss events or certain other events, either (i) Toledo and Cleveland shall assume the obligations represented by the Lessor Notes, or (ii) Toledo and/or Cleveland shall purchase from the beneficiaries of the trusts issuing the Lessor Notes the beneficial interest in such trusts and the Lessors will grant a lien on and security interest in the Leased Property to secure the Lessor Notes. The assumption or purchase described in the preceding sentence will be in partial satisfaction of Toledo's and Cleveland's obligation to make payments required of them upon early termination of the Leases in consequence of any such event. The preservation of the right of Toledo and Cleveland to assume the Lessor Notes in certain circumstances permits them to avoid an accelerated obligation to prepay the Lessor Notes under provisions of the Leases.

13. The issue, sale and delivery of a particular series of Lease Bonds may be effected, at maximum, two months prior to the date for the consummation of the



Leases ("Lease Closing Date") applicable to the Leased property financed with the Lease Bond proceeds. Pending the Lease Closing Date, the net proceeds of the Lease Bonds will be held by the Trustee, pursuant to the terms of the Collateral Trust Indenture. The Trustee may invest proceeds in Permitted Investments, which include direct obligations of the United States or obligations fully guaranteed by the United States, certificates of deposit issued by or bankers' acceptances of, or time deposits with, banks organized under United States law and limited to amounts of less than \$15 million in principal at any one time and from any one bank, or commercial paper of companies incorporated in or doing business under the laws of the United States or one State, in an amount not exceeding \$15 million in principal amount at any one time from any one company. The commercial paper will also have the highest rating by a nationally recognized rating organization. Permitted Investments also include repurchase agreements, fully collateralized by the Permitted Investments, pursuant to which a United States bank, trust company or national banking association having a net worth of at least \$200 million is obligated to repurchase the obligation not later than 90 days after its purchase.

14. Except to the extent payable from the proceeds of refunding the Lease Bonds, or the proceeds of the initial issuance of the Lease Bonds, where the relevant Lease Closing Date does not occur simultaneously, due to the non-recourse nature of Lessor Notes and the limited scope of Applicant's activities, payment of the principal of and premium, if any, and interest on the Lease Bonds will be made exclusively from amounts paid by the Lease under the Leases.

15. It is expected that the Lessors will be grantor trusts formed exclusively for the purpose of lease financing. The original beneficiaries of such grantor trust may be a single sophisticated institutional investor, or under limited circumstances, a single or indirect subsidiary of Centerior, acting in its individual capacity or, a limited partnership composed of one or more partners, each of whom will be a sophisticated investor. All such beneficial interests and partnership interests will be offered and sold in transactions not involving a public offering within the meaning of section 4(2) of the Securities Act. Subsequent transfers of such beneficial interests may be made only to a transferee which is a financial institution, a corporation

or partnership, a majority in interest in which is composed of one or more financial institutions or corporations, and in no event shall such transfer violate the Securities Act. Applicant believes that these restrictions, when considered in light of the nature of leveraged lease transactions, effectively preclude all but the most sophisticated investors from being a transferee. The nature and availability of the tax benefits of the beneficial interest, the legal and regulatory framework of the transactions and the complex financial analysis required assure that only sophisticated institutional investors will be potential analysis required assure that only sophisticated institutional investors will be potential transferees of beneficial interests in the Lessor. Moreover, Applicant represents that any sale and lease back transaction as described in the application consummated on or after October 1, 1987, (excluding therefore, the Lease Transactions already consummated as described in the application) will contain limitations designed to ensure that both the original beneficiary of each grantor trust acting as Lessor and each transferee thereof will be a sophisticated investor.

#### Applicant's Legal Conclusions

Applicant's proposed activities are appropriate in the public interest because the proposed issuance of Lease Bonds would provide a convenient mechanism for Toledo and Cleveland to obtain access to segments of the debt capital market other than the institution private placement market. The primary reason for making Toledo and Cleveland co-lessees under the Leases is to provide purchases of the Lease Bonds (and the Lessors under the Leases) with access to the credit of both utility companies and thus to enhance the investment characteristics of the Lease Bonds. An exemption would be consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because, among other things, investors will be protected under the proposed arrangements to the same extent as under equivalent arrangements where the 1940 Act is inapplicable.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-27119 Filed 11-24-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16134; 812-6825]

#### DQU Funding Corporation; Application

November 18, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 ("the 1940 Act").

*Applicant:* DQU Funding Corporation.

*Relevant 1940 Act Sections:*

Exemption requested under section 6(c) from all provisions of the 1940 Act.

*Summary of Application:* Applicant seeks an order to permit it to assist Duquesne Light Company ("Duquesne") in the financing and refinancing of property through leveraged lease financing transactions in which Duquesne will be the lessee.

*Filing date:* The application was filed on August 11, 1987, and amended on November 18, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 9, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1209 Orange Street, Wilmington, Delaware 19801.

**FOR FURTHER INFORMATION CONTACT:** Richard Pfordte, Special Counsel, (202) 272-2811 or Karen L. Skidmore, Special Counsel, (202) 272-3023 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

#### Applicant's Representations

1. Applicant is a Delaware corporation and all of its shares of common stock are owned by Corporate Trinity Company ("CTC"), a company controlled by The Corporation Trust Company ("CT"). There has been, and



Applicant undertakes that in the future there will be, no public offering of Applicant's common stock or of any other equity security. There is, and in the future will be, no class of equity securities of Applicant other than its common stock. Applicant has been created to participate as lender in one or more leveraged lease transactions ("Lease Transactions"), in which Duquesne, a Pennsylvania corporation, is the lessee ("Lessee"). Duquesne will make an initial determination as to whether or not the debt portion of such leveraged lease transaction will be funded through the Applicant's sale of one or more series of its debt securities with differing maturities ("Lease Bonds").

2. Applicant's sole purpose is to assist Duquesne in the financing and refinancing,<sup>1</sup> in whole or in part, of Duquesne's 13.74% undivided ownership interest (directly or through its beneficial interest in an energy trust) in Beaver Valley Power Station Unit No. 2 ("Unit 2"), a nuclear generating station located on the Ohio River at Shippingport, Pennsylvania. Pursuant to an Operating Agreement relating to, among other things, Unit 2, Duquesne is authorized to act as agent for the other companies, including Ohio Edison Company, entitled to the capacity of and energy from Unit 2, and has responsibility and control over construction, operation and maintenance of Unit 2. Rights under such Operating Agreement relating to the undivided interests being financed and refinanced by Duquesne will be assigned to the Lessors (referred to below) and reassigned for the benefit of the holders of Lessor Notes (as hereinafter defined).<sup>2</sup> Although Unit 1 was financed in a similar manner by Duquesne, it will not be refinanced using the Applicant.

3. Applicant's participation as lender in the Lease Transactions will be limited to making loans pursuant to a Loan and Security Agreement or a Trust Indenture and Security Agreement (in either case, a "Lease Indenture") to certain lessors ("Lessors") under the leases forming a part thereof ("Leases") which will be payable primarily from rentals and other payments by the Lessee. Initially the Lessor under each Lease will be a bank or trust company, incorporated and doing business within the United States

of America and having a combined capital and surplus of at least \$50,000,000, acting as trustee for one or more beneficiaries pursuant to a trust agreement entered into exclusively for the purpose of the lease financing. Under such trust agreement, any successor trustee must be a bank or trust company incorporated and doing business within the United States of America and having a combined capital and surplus of at least \$50,000,000. A portion of the purchase price of the property owned by the Lessors and leased to the Lessee ("Leased Property") will be paid by the beneficiaries of the grantor trust that acts as Lessor and that amount will constitute their equity investment in the Leased Property. (See paragraph 15 below.) The loans by Applicant will be without recourse to the general credit of the Lessors or their respective beneficiaries, and will be evidenced by non-recourse obligations of the respective Lessors ("Lessor Notes").

4. Under each Lease, the Lessee will be obligated to make rental payments sufficient to pay principal of and premium, if any, and interest on the Lessor Notes issued in connection therewith. Such obligations of the Lessee will be required to be absolute and unconditional, without right of counterclaim, setoff, deduction or defense. CTC and CT have entered into an agreement with Duquesne pursuant to which CTC and CT have agreed to cause Applicant to make loans to one or more Lessors designated by Duquesne from time to time and Duquesne has agreed to provide certain indemnifications to CTC and CT with respect to such participations.

5. The funds necessary for the purchase of the Lessor Notes will be acquired through the issuance by Applicant of its debt securities ("Lease Bonds"), in one or more series with differing maturities which will be secured on a parity basis by a first lien on, and a security interest in, all of the assets of Applicant, consisting primarily on the Lessor Notes so acquired and previously acquired and which may include a lien on or security interest in the Leased Property. Lessor Notes held by Applicant will consist only of Lessor Notes issued in connection with any Leases to which Duquesne is a party, as Lessee, relating to its ownership interest (directly or through their beneficial interest (directly or through their beneficial interest in an energy trust) in Unit 2.

6. All Lease Bonds will be issued under a common indenture and a separate supplemental indenture for

each series (collectively, the "Collateral Trust Indenture") which will establish the terms of the Lease Bonds of that series.

It is expected that the trustee under the Collateral Trust Indenture ("Trustee") will be a bank or trust company not affiliated with any of the Lessors and will not be a trustee under any indenture of Duquesne or its subsidiaries. At each lease closing involving the financing of the debt portion of the purchase price of the Leased Property through the issuance of Lease Bonds, the Lessor Notes will be pledged and assigned directly to the Trustee. Applicant expects that the Lessor Notes will be offered and sold under circumstances making such transactions exempt from the registration requirements under the Securities Act of 1933 ("Securities Act").

7. The Lease Indentures will set forth the terms and conditions under which the Lessor Notes will be issued. Each Lease Indenture will require the Lessor to grant to the Applicant (if the Lease Indenture is a Loan and Security Agreement) or a trustee under the Lease Indenture ("Lease Indenture Trustee") (if the Lease Indenture is a Trust Indenture and Security Agreement), an assignment of rents, including basic rentals and certain other payments, to be made by the Lessee under the applicable Lease. The Lease Indenture Trustee or the Applicant may have a lien on, or security interest in, the Leased Property. The Lessor will covenant that, so long as any Lessor Note is outstanding, it will not incur any other debt not constituting Lessor Notes or otherwise in connection with the Leased Property, and except for certain limited permitted liens, it will not create any lien on or security interest in such property. Thus, these two covenants combined ensure that if a Lessor defaults on a Lessor Note, the Leased Property will be available to satisfy the claims of the Trustee, acting for the benefit of Lease Bondholders. Applicant will be precluded from purchasing any Lessor Note unless (i) such Lessor Note is issued in respect of Leased Property having a fair market sales value at the time of purchase at least equal to 110% of the original principal amount of such Lessor Note, or (ii) such Lessor Note and all other Lessor Notes (if any) issued by the relevant Lessor are issued in respect of Leased Property having an aggregate fair market value (measured, in each case, as of the date such Leased Property was first financed under the Lease) at least equal to 110% of the original principal amount of such Lessor Note and such other Lessor Notes.

<sup>1</sup> Applicant believes any refinancing will be undertaken infrequently and that every representation concerning the Lease Bonds will apply to each and every series irrespective whether such series of Lease Bonds refunds a prior series.

<sup>2</sup> Applicant represents that Duquesne has received all regulatory approvals necessary for the consummation of the Lease Transactions.



Further, each Lease Indenture will include as events of default, without limitation: (a) Payment defaults on the Lessor Notes issued thereunder, and (b) certain events of default under the related Lease.

8. The various series of Lease Bonds will have terms which may differ as to interest rates, sinking fund obligations of Applicant, the right of Applicant to redeem such Lease Bonds and other matters. The interest rates, maturities and principal amounts of each series of Lease Bonds will be established based on prevailing market conditions, thereby giving Applicant flexibility to take advantage of changing market conditions. If the maturity dates and cash flow of the Lessor Notes exceed the cash requirements of Applicant's obligations under the Lease Bonds, the resulting funds ("Temporary Funds") will be invested by Applicant in certain investments ("Permitted Investments"), in each case maturing at such time as necessary to pay Applicant's obligations under the Lease Bonds. The Lease Bonds, which may include commercial paper and intermediate-term and long-term obligations, will be issued in private placements pursuant to section 4(2) of, or in underwritten public offerings registered under, the Securities Act, or possibly in distributions exempt from registration because they will come to rest outside the United States (provided that the Lease Bonds are offered and sold outside the United States and to non-U.S. persons without registration under the Securities Act in reliance upon an opinion of U.S. counsel that registration is not required and that no single offering of Lease Bonds both within and outside the United States will be made without registration of all such Lease Bonds under the Securities Act without first obtaining a no-action letter permitting such offering or otherwise complying with applicable standards then governing such offerings). In all such cases, Applicant will adopt agreements and procedures reasonably designed to prevent such Lease Bonds from being offered or sold in the United States or to U.S. persons (except as U.S. counsel may then advise is permissible).

9. The initial issuance of Lease Bonds will be through an underwritten public offering of one or more series having an aggregate principal amount of approximately \$480 million (assuming a total sales price for Duquesne's interest in Unit 2 of \$600 million). Although Duquesne will not be the actual issuer of the Lease Bonds, it will be considered the "issuer" thereof for purposes of the Securities Act. Any registration

statement filed under the Securities Act relating to the Lease Bonds will name Duquesne as the sole registrant and will be signed on behalf of Duquesne as the sole registrant by such officers and directors of Duquesne as may be required under the Securities Act and the rules, regulations and forms of the Commission thereunder. Accordingly, the provisions of section 11 of the Securities Act will apply to Duquesne.

10. Applicant will assign and pledge to the Trustee under the Collateral Trust Indenture, as security for the payment of the principal of and premium, if any, and interest on all Lease Bonds, the Lessor Notes and other assets held by the Applicant. Each such Lessor Note will be turned over to the assigned rentals and other assigned payments under such Lease and may be secured by the Leased Property. The Trustee will give immediate notice to the Lease Bondholders of any rights granted by the Collateral Trust Indenture to it, which will include the right to exercise voting powers in respect of the Lessor Notes, to give any consents or waivers with respect thereto or to exercise any rights and remedies in respect thereof. The Collateral Trust Indenture will authorize the Lease Bondholders to direct, by notice to the Trustee within a specific period of time, that it take any action or cast any vote in its capacity as a holder of the Lessor Notes. As a result of this pass-through voting mechanism, the rights and remedies of Lessor Noteholders will be exercisable directly by the Lease Bondholders through their fiduciary the Trustee. The principal amount of Lessor Notes directing any action or being voted for or against any proposal will be the principal amount of the Lease Bondholders taking the corresponding position. To the extent the Trustee does not receive instruction, it will take such action with respect to the Lessor Notes as a prudent man would in the care of his own property.

11. In the event Duquesne defaults in the payment of that portion of rent necessary to pay all amounts due and payable in respect of the Lessor Notes, the Applicant or the Lease Indenture Trustee, as the case may be, would have the right to exercise, concurrently with the exercise by the Lessor under the applicable Lease of any remedies available to it under such Lease, all of the rights and remedies against Duquesne provided in the related Lease. The exercise of such rights and remedies would be at the direction of the Lease Bondholders through the Trustee's instructions to the Lease Indenture Trustee or as pledge of the Applicant's interest in such Lease Indenture.

12. Among the rights and remedies of a holder of Lessor Notes included under the Lease Indenture is the right to demand, after a specified grace period, that Duquesne pays all unpaid rent plus a stipulated amount which, in all cases, will be sufficient to pay the principal of and premium, if any, and interest of the related Lessor Notes. Amounts payable by Duquesne under the Leases, to the extent of the amount of the principal of and premium, if any, and interest on the relevant Lessor Notes, will be paid directly to the Trustee for distribution to the Lease Bondholders. Therefore the Lease Bondholders will have access under the Collateral Trust Indenture and the Lease Indentures to the credit of Duquesne. Moreover, the Lease Bondholders will be entitled to realize on the security afforded by the security interest created by the Lease Indenture in an amount up to the aggregate unpaid amount of the relevant Lessor Notes secured by such security interest. The combination of the Lessor Notes and the obligation of Duquesne under the Leases, grants holders of Lease Bonds access to the general credit of Duquesne and is thus the functional equivalent of a guaranty by Duquesne. The Lessor Notes and the Lease Indenture will provide that, upon the occurrence of certain casualty events, termination events, deemed loss events, special loss events or certain other events, either (i) Duquesne shall assume the obligations represented by the Lessor Notes, or (ii) Duquesne shall purchase from the beneficiaries of the trusts issuing the Lessor Notes the beneficial interest in such trusts and the Lessors will grant a lien on and security interest in the Leased Property to secure the Lessor Notes. The assumption or purchase described in the preceding sentence will be in partial satisfaction of Duquesne's obligation to make payments required of it upon early termination of the Leases in consequence of any such event. The preservation of the right of Duquesne to assume the Lessor Notes in certain circumstances permits Duquesne to avoid an accelerated obligation to prepay the Lessor Notes under provisions of the Leases.

13. The issue, sale and delivery of a particular series of Lease Bonds may be effected, at maximum, two months prior to the date for the consummation of the Leases ("Lease Closing Date") applicable to the Leased Property financed with the Lease Bond proceeds. Pending the Lease Closing Date, the net proceeds of the Lease Bonds will be held by the Trustee, pursuant to the terms of the Collateral Trust Indenture. The Trustee may invest proceeds in



Permitted Investments, which include direct obligations of the United States or obligations fully guaranteed by the United States, certificates of deposit issued by or bankers' acceptances of, or time deposits with, banks organized under United States law and limited to amounts of less than \$15 million in principal at any one time and from any one bank, or commercial paper of companies incorporated in or doing business under the laws of the United States or one State, in an amount not exceeding \$15 million in principal amount at any one time from any one company. The commercial paper will also have the highest rating by a nationally recognized rating organization. Permitted Investments also include repurchase agreements, fully collateralized by the Permitted Investments, pursuant to which a United States bank, trust company or national banking association having a net worth of at least \$200 million is obligated to repurchase the obligation not later than 90 days after its purchase.

14. Except to the extent payable from the proceeds of refunding the Lease Bonds, or the proceeds of the initial issuance of the Lease Bonds, where the relevant Lease Closing Date does not occur simultaneously, due to the nonrecourse nature of Lessor Notes and the limited scope of Applicant's activities, payment of the principal of and premium, if any, and interest on the Lease Bonds will be made exclusively from amounts paid by the Lessee under the Leases.

15. It is expected that the Lessors will be grantor trusts formed exclusively for the purpose of lease financing. The original beneficiaries of such grantor trust may be a single sophisticated institutional investor, or under limited circumstances, a single or indirect subsidiary of Duquesne, acting in its individual capacity or, a limited partnership composed of one or more partners, each of whom will be a sophisticated investor. All such beneficial interests and partnership interests will be offered and sold in transactions not involving a public offering within the meaning of section 4(2) of the Securities Act. Subsequent transfers of such beneficial interests may be made only to a transferee which is a financial institution, a corporation or partnership, a majority in interests in which is composed of one or more financial institutions or corporations, and in no event shall such transfer violate the Securities Act. Applicant believes that these restrictions, when considered in light of the nature of leveraged lease transactions, effectively

preclude all but the most sophisticated investors from being a transferee. The nature and availability of the tax benefits of the beneficial interest, the legal and regulatory framework of the transactions and the complex financial analysis required assure that only sophisticated institutional investors will be potential transferees of beneficial interests in the Lessor. Moreover, Applicant represents that any sale and leaseback transaction as described in the application consummated on or after October 3, 1987, (excluding therefore, the Lease Transactions already consummated as described in the application) will contain limitations designed to ensure that both the original beneficiary of each grantor trust acting as Lessor and each transferee thereof will be a sophisticated investor.

#### **Applicant's Legal Conclusions**

Applicant's proposed activities are appropriate in the public interest because the proposed issuance of Lease Bonds would provide a convenient mechanism for Duquesne to obtain access to segments of the debt capital market other than the institutional private placement market. An exemption would be consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because, among other things, investors will be protected under the proposed arrangements to the same extent as under equivalent arrangements where the 1940 Act is inapplicable.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-27120 Filed 11-24-87; 8:45 am]

BILLING CODE 8010-01-M

## **DEPARTMENT OF STATE**

### **Bureau of Consular Affairs**

[Public Notice 1040]

#### **Stateside Criteria Program (SCP)**

**AGENCY:** Bureau of Consular Affairs, DOS.

**ACTION:** Notice of final decision concerning the Stateside Criteria Program.

**SUMMARY:** On May 22, 1987 (52 FR 19442), the Department published Public Notice 1011 inviting public comment on its proposal to terminate the Stateside Criteria Processing (SCP) Program and on June 30, 1987 (52 FR 24362), it

published Public Notice 1015 extending the period for comment until July 15, 1987. The comments received have been analyzed and it has been determined that the SCP program should be eliminated because the beneficiaries, with few exceptions, have recourse to other reasonable means to pursue their immigrant visa applications. As originally proposed, cases already in process as of the effective date of termination will be processed to a conclusion by the office designated under the SCP program for that purpose. Applications for aliens who are from countries in which the Department does not have an immigrant visa issuing office will be processed at other posts worldwide. The Department will send instructions to all posts to take such discretionary cases on a priority basis as resources permit.

**EFFECTIVE DATE:** The termination of the Stateside Criteria Program will take effect on December 31, 1987.

**FOR FURTHER INFORMATION CONTACT:** Cornelius D. Scully III, Director, Office of Legislation, Regulations and Advisory Assistance, Visa Office, Department of State, Washington, DC 20520 (202) 663-1184.

**SUPPLEMENTARY INFORMATION:** During the comment period the Department received 17 comments. In this connection, comments received between June 12 (the end of the initial comment period) and June 30 (the date of the Public Notice 1015 extending the comment period) were treated as having been timely submitted.

#### **Comments Received**

A few commenters merely inquired about the technical implementation of the proposed termination of the SCP program. A discussion of the technical question raised is set forth below. Other commenters opposed the proposal to terminate the SCP program on one or both of the following bases—(1) the Department could not expect to realize cost savings from termination since the applications would be processed somewhere and/or had not adequately explained how the savings would be realized or their extent; and (2) termination would impose unjustifiable hardship on at least some aliens who now benefit from the SCP program.

#### **Response to Comments**

During late 1986 and early 1987 the Department reviewed the SCP program and analyzed the workload data relating to it. This analysis indicates that approximately 29,000 immigrant visa applications were processed under the



SCP program during Fiscal Year 1986 by the six designated immigrant visa issuing offices in Canada and Mexico. The FY 1986 SCP cases were also analyzed in terms of the nationality of the applicants (and, thus, in terms of the immigrant visa issuing office which would presumably process the alien's visa application if the SCP program did not exist). It was determined that those cases would have been spread among 150 visa issuing offices around the world and that in most cases, the resulting incremental workload increase can be handled without additional personnel. As a result, termination of the SCP program and the dispersing of SCP applications worldwide will allow the Department to reprogram the SCP resources to higher priorities.

The commenters who opposed termination on the ground that some of the aliens affected would suffer undue hardship cited various groups of aliens to whom their concern is directed. Among them were aliens who would face significantly increased expense in travelling to their country or area of last residence, aliens who have various other personal reasons for not returning to that country or area, aliens who have a well-founded fear of persecution in that country or area and aliens in whose country or area there is no immigrant visa issuing office.

#### Decision Regarding Stateside Criteria Program

The Department recognizes that there are appealing aspects to each of the situations described by the various commenters, but considers that the normal immigrant visa application process is the most equitable mechanism for processing these cases. However, two groups of aliens merit special consideration: Those who have a well-founded fear of persecution in their country or area of last foreign residence and aliens in whose country or area of last foreign residence there is no United States immigrant visa issuing office. In considering this matter, the Department believes that the concern relating to aliens who have a well-founded fear of persecution in their country or area of last foreign residence need not be addressed in the context of the SCP program. Such an alien, if in the United States, will qualify for asylum under section 208 of the Immigration and Nationality Act, and, thus will continue to have a meaningful alternative to the SCP program.

On the other hand, aliens in the United States who would have been eligible for SCP and in whose country or area of last foreign residence there is no U.S. immigration visa issuing office will

have no specific office designated to process their applications upon the termination of the SCP program. Consular officers are, however, authorized by Departmental regulations (22 CFR 42.110) to accept as a matter of discretion an immigrant visa application from an alien who is neither a resident of, nor physically present in the district of the immigrant visa issuing office. The Department encourages consular officers to accept discretionary cases when failure to do so would work a hardship on the applicant, provided the regular workload of the office permits doing so.

The Department is aware that many immigrant visa issuing offices continue to accept discretionary cases, even though their ability to do so in large volume has been reduced by staffing constraints. The analysis of the SCP workload data previously mentioned also reflects that there were relatively few cases in the SCP program involving aliens in whose country or area of last foreign residence there is no U.S. immigrant visa issuing office. As a result, the Department believes that all such cases can be dealt with as discretionary cases. To this end, the Department will remind all consular officers that such cases involve hardship as the Department interprets that word and will urge all consular officers to give priority to the discretionary acceptance of such cases to the extent that workload permits. The Department is confident that this step will address the concern expressed by commenters.

The inquiry made by some commenters related to the meaning which would be given to the proposed "savings clause" referred to in Public Notice 1011. In that notice it was stated that cases already in process as of the effective date would be processed to a conclusion by the designated SCP processing office. The commenters inquired as to the precise definition of "cases already in process." This phrase is interpreted for this purpose to mean any approved petition filed prior to the effective date of the termination of the SCP program whose beneficiary met the requirements for the SCP program on the filing date of the petition, regardless of the date of approval of the petition and of the date of receipt of the approved petition by the designated SCP post.

Accordingly, the SCP Program will terminate effective December 31, 1987. All cases already in process as of that date will be processed to a conclusion by the SCP processing post designated for that purpose.

Dated: November 19, 1987.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 87-27067 Filed 11-24-87; 8:45 am]

BILLING CODE 4710-06-M

#### TENNESSEE VALLEY AUTHORITY

##### Environmental Impact Statement; Reservoir System Operations

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** Notice of intent.

**SUMMARY:** TVA is issuing this notice to advise the public that it has elected to prepare an Environmental Impact Statement (EIS) concurrently with a study and reevaluation of its operation of the reservoirs and dams which comprise the Tennessee River system. This study may result in proposals for changes in TVA's existing reservoir operations. TVA requests comments on the appropriate scope of the RTS. See 40 CFR 1501.7.

**DATES:** Comments on the scope of the EIS must be received on or before December 31, 1987. Public meetings to provide information about TVA's reservoir system reevaluation study and to solicit comments on the study and the scope of the EIS will be held from 4 p.m. to 8 p.m. in the following cities on the specified dates: Blountville, TN (11/24); Murphy, NC (12/1); Chattanooga, TN (12/2); Knoxville, TN (12/3); Huntsville, AL (12/8); Tupelo, MS (12/9); Memphis, TN (12/10); Paris, TN (12/15); Benton, KY (12/16); and Nashville, TN (12/17).

**ADDRESS:** Comments on the scope of the EIS should be sent to Christopher D. Ungate, Project Manager, Reservoir System Operations and Planning Review, Tennessee Valley Authority, 400 W. Summit Hill Drive, E5D84, Knoxville, Tennessee 37902.

**FOR FURTHER INFORMATION CONTACT:** Dale V. Wilhelm, (615) 632-6693, or call TVA's Citizen Action Office, (615) 632-4100 (Knoxville, Tennessee), 1-800-362-9250 (inside Tennessee) or 1-800-251-9242 (from Alabama, Arkansas, Georgia, Kentucky, Missouri, Mississippi, North Carolina, and Virginia).

**SUPPLEMENTARY INFORMATION:** TVA is initiating a comprehensive study of the reservoir system it operates. This study will not only provide a better understanding of existing conditions but possibly identify operational changes which will produce greater benefits. To solicit the widest possible public review of this study or reevaluation and any recommendations for proposals to



change operations which may result from the study, TVA has elected to prepare an EIS concurrently with preparation of the study. Consistent with TVA's procedures implementing the National Environmental Policy Act (NEPA) and the regulations promulgated by the Council on Environmental Quality, TVA is soliciting comments on the appropriate scope of this EIS.

The Tennessee River, formed by the confluence of the Holston and French Broad Rivers, has its origin in the western Appalachian Mountains of Virginia and North Carolina and flows 650 miles (1,045 km) to its mouth at the confluence with the Ohio River. The drainage basin comprises about 41,000 square miles (106,000 square km). The river is the fifth largest in the United States in terms of discharge and is commercially navigable upstream to Knoxville, Tennessee.

The Tennessee River and its tributaries are controlled through a system of 40 dams (36 TVA dams and 4 Aluminum Company of America (ALCOA) dams); these dams impound approximately 650,000 acres (264,000 ha). TVA operates 29 of these dams for hydroelectric production with installed capacity of about 3300 megawatts. The four ALCOA dams in the TVA system provide another 300 megawatts of capacity.

The Tennessee Valley Authority Act of 1933 charged TVA with the responsibility for developing, managing, and operating the Tennessee River system for the benefit of the people of the region and Nation. TVA was the first such comprehensive authority created in the United States, and it has been a pioneer in developing the integrated, basin-wide river system development concept.

The TVA Act directs the agency to operate its dams and reservoirs for navigation and flood control, and, to the extent consistent with these purposes, for power generation. In addition to those statutory goals, other system operating objectives have evolved over the years, such as enhancement of recreation, control of diseases carrying pests and aquatic plants, water quality protection, fish and waterfowl management, and development of adequate water supplies. In the management of TVA's multipurpose reservoir system, each objective must be treated as part of a carefully coordinated operating plan to reduce conflicts and provide the maximum overall benefit.

The EIS TVA proposes to prepare will assess the environmental consequences of any recommendations for major operational changes which may be

proposed as a result of the study. Alternatives to such operational changes will also be identified as appropriate and the environmental consequences of these alternatives will also be evaluated. Experience indicates that some, if not many, of the potential environmental consequences of reservoir operating decisions may be too speculative or removed to permit realistic evaluation. Certainly, quantification of all potential environmental costs or benefits will not be possible. However, it should be possible to at least qualitatively assess a wide range of potential impacts and benefits of operational decisions and to compare these, and this is what TVA intends to pursue in this NEPA review process.

The first step in the preparation of the EIS is determining the scope of the document. TVA has tentatively identified an initial set of key issues that are expected to be addressed by the study and which may be the impetus for operational changes. This set of issues should not be viewed as complete, but rather as a starting point to focus comments. The issues are: (1) Dissolved oxygen levels and their effects, (2) minimum riverflows needed for waste assimilation, (3) control of municipal and hazardous wastes that may affect the river, (4) water quality and future economic development, (5) aquatic weed issues, (6) pool levels and minimum flows for recreation, (7) reservoir operation and power production, (8) water supply for agricultural and industrial use, (9) flood control, (10) fish and wildlife considerations, (11) reservoir land management alternatives, and (12) navigation implications.

TVA requests comments on whether these issues appropriately reflect the scope of the EIS and asks persons commenting to identify any additional issues which should be evaluated in the EIS. Additionally, if one or more of the identified issues are not viewed as important, TVA asks that these be identified. Comments can be made in writing by mailing them to Christopher Ungate or provided either verbally or in writing at one of the 10 meetings TVA will hold. Specific locations for each of these meetings will be provided later through newspapers and radio and television stations. Alternatively, TVA's Citizen Action Office can be called to elicit such details when they become available. TVA invites all interested persons to attend and participate in these meetings. An information packet about the study is available and may be

requested through TVA's Citizen Action Office.

Alvan Bruch,

Chief Environmental Policy Staff.

[FR Doc. 87-27133 Filed 11-24-87; 8:45 am]

BILLING CODE 88120-01-M

## DEPARTMENT OF TRANSPORTATION

[Order 87-11-43]

### Department Findings in Employee Protection Program Cases

**AGENCY:** Department of Transportation.

**ACTION:** Notice of order finding major contractions at certain certificated air carriers.

**SUMMARY:** The Department of Transportation has found that several airlines experienced major contractions in employment levels during the period from October 1985 through February 1987. The Department's findings, in eight cases triggered by employee applications for benefits update those last made by the Department's previous Order 86-3-17. The Department found that the following carriers experienced major contractions in the stated periods.

(a) Airlift International in each of the fourteen months from October 1984 through November 1985 and also in each of the fourteen months from January 1986 through February 1987;

(b) Pan American World Airways in October 1985 and in each of the twelve months from February 1986 through January 1987;

(c) Republic Airlines in April, May, June and July 1984 and in January 1985;

(d) Trans World Airlines in January, February and May 1984, and also in each of the nine months from June 1986 through February 1987; and

(e) Western Airlines in the month of October 1984.

The findings are part of the Department's investigations to make threshold determinations regarding assistance for airline employees under the Employee Protection Program, section 43 of the Airline Deregulation Act, 49 U.S.C. 1552.

**FOR FURTHER INFORMATION CONTACT:** Stephen A. Metoyer, Office of the General Counsel (C-10, Room 10102), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9154.

**SUPPLEMENTARY INFORMATION:** The complete text of Order 87-11-43 is available for inspection from our Documentary Services Division at the above address.



Dated: November 20, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and  
International Affairs.

[FR Doc. 87-27124 Filed 11-24-87; 8:45 am]

BILLING CODE 4910-62-M

## Coast Guard

[CGD 87-085]

### Rules of the Road Advisory Council; Membership Applications

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

**SUMMARY:** The U.S. Coast Guard is seeking applications for appointment to membership on the Rules of the Road Advisory Council. This Council was established under the Inland Navigational Rules Act of 1980 (33 U.S.C. 2073) to advise, consult with, and make recommendations to the Secretary of Transportation on matters relating to the Inland Navigation Rules and the International Regulations for Preventing Collisions at Sea (72 COLREGS).

**DATES:** Requests for applications should be received by the Coast Guard no later than January 15, 1988. Applications must be completed and returned to the Coast Guard no later than February 15, 1988.

**ADDRESS:** Persons interested in applying should write to Commandant (G-NSS-2), U.S. Coast Guard Headquarters, Washington, DC 20593-0001.

**FOR FURTHER INFORMATION CONTACT:** Commander Charles K. Bell, Executive Director, Rules of the Road Advisory Council (G-NSS-2), Room 1606, U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593-0001, (202) 267-0414.

**SUPPLEMENTARY INFORMATION:** In June 1988, there will be seven vacancies on the 21-member Council. The seven appointments will be made by the Secretary of Transportation. The Coast Guard will accept applications received after the publication of this notice and before February 15, 1988, and thereafter make recommendations to the Secretary. Under the Inland Navigation Rules Act and " \* \* to assure balanced representation, members shall be chosen, insofar as practical, from the following groups: (1) Recognized experts and leaders in organizations having an active interest in the Rules of the Road and vessel and port safety, (2) representatives of owners and operators of vessels, professional mariners, recreational boaters, and the

recreational boating industry, (3) individuals with an interest in maritime law, and (4) Federal and state officials with responsibility for vessel and port safety."

Since its establishment, the Council has met at least yearly at various sites in the continental United States. Members are entitled to receive per diem in lieu of subsistence, as well as to be reimbursed for travel expenses, in accordance with current regulations. The seven new appointments will expire three years from June 1988.

Date: November 20, 1987.

Alan B. Smith,

Captain, U.S. Coast Guard, Chief, Office of  
Navigation, Acting.

[FR Doc. 87-27142 Filed 11-24-87; 8:45 am]

BILLING CODE 4910-14-M

## Federal Aviation Administration

### Radio Technical Commission for Aeronautics (RTCA), Special Committee 161; Minimum Aviation System Performance Standard for Radio Determination Satellite System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of RTCA Special Committee 161 on Minimum Aviation System Performance Standard for Radio Determination Satellite System to be held on December 10-11, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Fourth Meeting; (3) Report on Mobile WARC RDSS Actions; (4) Report on FCC Disposition of Report on RDSS System Interference Analysis, RTCA Paper No. 390-87/SC161-21; (5) Report by GOSTAR on RDSS System Interference; (6) Report on Radio Technical Commission for Marine Services Special Committee 108 Activities; (7) Review of Draft Material for the Initial Draft RDSS MASPS; (8) Assignment of Tasks; (9) Other Business; (10) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain

information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 11, 1987.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 87-27066 Filed 11-24-87; 8:45 am]

BILLING CODE 4910-13-M

## [Summary Notice No. PE-87-31]

### Petition for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation  
Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Ch. I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petition received must identify the petition docket number involved and must be received on or before December 16, 1987.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. \_\_\_\_\_, 800 Independence Avenue SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G,



FAA Headquarters Building (FOB 10A),  
800 Independence Avenue SW.,  
Washington, DC 20591; telephone (202)  
267-3132.

This notice is published pursuant to  
paragraphs (c), (e), and (g) of § 11.27 of  
Part 11 of the Federal Aviation  
Regulations (14 CFR Part 11).

Issued in Washington, DC, on October 17,  
1987.

Deborah E. King,  
Acting Manager, Program Management Staff.

#### PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25410	BAE Aviation, Inc.	14 CFR 43.3 and 43.7	To allow petitioner to acquire various Viscount aircraft parts from Jadepoint Engineering Ltd. U.K., a British CAA-certified Viscount repair station. The subject parts have not been maintained or approved for return to service by persons prescribed by §§ 43.3 and 43.7 and are intended to be installed on U.S. Part 125 operator's Viscount aircraft.
25029	Rosenbalm Aviation, Inc.	14 CFR 121.371(a) and 121.378	To allow petitioner to utilize Scandinavian Airlines System (SAS) to perform a complete airframe overhaul (C and D checks) on petitioner's one DC-8-63 aircraft at the SAS overhaul facilities at Stockholm (Arlanda) and Stockholm-Bromma (Linta), Sweden. Granted, November 9, 1987.
25307	Precision Airlines	14 CFR 135.429(a) and 135.435	To allow petitioner to use on its German built DO229-210 aircraft certain components, parts, and accessories repaired, overhauled, or otherwise maintained by respective original equipment manufacturers. Granted, November 10, 1987.

#### DISPOSITION OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought—Disposition
935CE	Beech Aircraft Corporation	SFAR 41C(e)(k)	To allow petitioner to permit the manufacture of the Model 300 Series Airplanes having a ten passenger "soft touch" interior, which does not comply with the aisle width requirements of the FAR, Denial, July 6, 1987.
82-CE-27-AD	Mr. William T. Creech on behalf of Piper PA-24 Airplanes Owners and Operators.	14 CFR 39.11	To permit petitioner relief from the Airworthiness Directive (AD) 82-19-01. This AD requires a wing spar inspection of Piper Aircraft Corporation Models PA-24, PA-24-250, PA-24-260 and PA-24-400 series airplanes each 100 hours of flight time and was issued as a result of a spar failure which occurred July 24, 1982. Denial, October 26, 1987.

[FR Doc. 87-27064 Filed 11-24-87; 8:45 am]

BILLING CODE 4910-13-M

#### Federal Highway Administration

##### Environmental Impact Statement; Fauquier County, VA

**AGENCY:** Federal Highway  
Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Fauquier County, Virginia.

**FOR FURTHER INFORMATION CONTACT:** George E. Kirk, Jr., District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240-0045, Telephone (804) 771-2380.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Virginia Department of Transportation (VDOT), will prepare an environmental impact statement (EIS) on a proposal to construct a new four-lane facility from Route 15/29 northeast of Warrenton to Route 17 northwest of Warrenton in the County of Fauquier and the Town of Warrenton, Virginia.

The project will involve construction on a new alignment for the entire length of the project. The environmental study limits of the project are from Route 29 on

the east to Route 17 on the west, for a total length of about 2.1 miles up to approximately 5.0 miles.

The proposed project will extend the new Warrenton Bypass to Route 17 northwest of Warrenton. It will provide the final link of an uninterrupted four-lane divided facility stretching from Route I-66 to the north and Route I-95 to the south. By removing through traffic from the old bypass and carrying it around the more congested parts of Warrenton, the project will help relieve traffic congestion in town.

Alternatives under consideration include: (1) Taking no action; (2) upgrading on new location south of the Warrenton reservoir; and (3) two additional alignments on new location north of Warrenton.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies. No formal scoping meeting is planned at this time. The Draft EIS will be available for public and agency review and comment. Following publication of the Draft EIS, a location and design public hearing will be held. Public notice will be given of the time and place of the hearing. A public information meeting will also be held during the early planning stages to informally present the proposed alternatives to the general public.

To ensure that the full range of issues related to this proposed action are

addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Draft EIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this project.

Issued on: November 18, 1987.

G.E. Kirk, Jr.,

District Engineer, Richmond, Virginia.

[FR Doc. 87-27131 Filed 11-24-87; 8:45 am]

BILLING CODE 4910-22-M

##### Environmental Assessment; New Castle County, DE

**AGENCY:** Federal Highway  
Administration (FHWA) DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to readvertise the public that an Environmental Impact Statement will be prepared for a proposed highway project in the City of Wilmington, New Castle County, Delaware.



**FOR FURTHER INFORMATION CONTACT:**

Robert H. Wheeler, Realty Officer, Federal Highway Administration, Delaware Division, 300 South New Street, Dover, Delaware 19901, Telephone: (302) 734-5323; or Joseph T. Wutka, Location Studies and Environmental Engineer, Delaware Department of Transportation, P.O. Box 778, Dover, Delaware 19903, Telephone: (302) 736-4642.

**SUPPLEMENTARY INFORMATION:**

The FHWA, in cooperation with the DELAWARE DEPARTMENT OF TRANSPORTATION, issued a NOTICE OF INTENT on September 18, 1980, in the *Federal Register*, Vol. 45, No. 183, pg. 62247 indicating that an Environmental Impact Statement (EIS) will be prepared as part of a planning study for a proposal to improve Twelfth Street, between Interstate 495 and Walnut Street in the City of Wilmington, Delaware. In addition, a formal scoping meeting was held on September 17, 1980.

Because of the time differential between the initial Notice of Intent and the preparation of the Draft Environmental Impact Statement which will be distributed in November, the FHWA is readvertising this Notice of Intent. The proposed improvement would involve the construction of a highway from the I-495-Twelfth Street Interchange east of the City of Wilmington to the intersection of Walnut Street and Twelfth Street in the center of the city, a distance of approximately 1.2 miles. Improvements to the corridor are considered necessary to provide adequate capacity for existing and projected traffic demand and incorporate modern design features to provide safe and efficient transportation service between the Wilmington CBD and Interstate 495.

Alternatives under consideration include (1) taking no action, (2) widening the existing roadway, (3) construction on new alignment and (4) a combination of (2) and (3). Alignment and design variations will be incorporated into and studies with the various build alternatives.

A public hearing is planned for late-1987. Public notice and individual mailing from an established list will be utilized to announce the time and place of the hearing. The draft environmental statement will be available for public and agency review and comment in November.

To insure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA address provided above.

(The Catalog of Federal Domestic Assistance Program Number 16 20.205). Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program.

Charles J. Nemmers,

P.E. Division Administrator, Dover, Delaware.

[FR Doc. 87-27136 Filed 11-24-87; 8:45 am]

BILLING CODE 4910-22-M

### **National Highway Traffic Safety Administration**

#### **Motor Vehicle Safety Research Advisory Committee; First Meeting**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Meeting announcement.

**SUMMARY:** This notice announces the first meeting of the Motor Vehicle Safety Research Advisory Committee. The committee was established in accordance with the provisions of the Federal Advisory Committee Act to coordinate motor vehicle safety research and avoid duplication of effort. This meeting will seek to identify the specific research activities that the Committee will initially address.

**Date and Time:** The meeting is scheduled to begin at 10:00 a.m., on December 10, 1987, and if necessary, conclude on December 11.

**ADDRESS:** The meeting will be held in Room 2230 of the U.S. Department of Transportation Building which is located at 400 7th Street, SW., Washington, DC.

**SUPPLEMENTARY INFORMATION:** On May 28, 1987, the Motor Vehicle Safety Research Advisory Committee (MVSRA) was established. The purpose of the Committee is to provide an independent source of ideas for safety research. The MVSRA will provide information, advice and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration and communication of motor vehicle safety research, as set forth in the MVSRA Charter.

On September 30, 1987, the following individuals were appointed to membership on the Committee:

Howard Smolkin, Managing Director, National Highway Traffic Safety Administration (Committee Chairman)

Michael M. Finkelstein, Associate Administrator for Research and Development, National Highway Traffic Safety Administration

Robert Ervin, Acting Director, The University of Michigan Transportation Institute, University of Michigan

B.J. Campbell, Director, University of North Carolina Highway Safety Research Center, University of North Carolina

W. Dale Compton, Senior Fellow, National Academy of Engineering

Michael Appleby, Manager, Automotive Engineering Department, Automobile Club of Southern California

Brian O'Neill, President, Insurance Institute for Highway Safety

Saviero Pugliese, Manager, Transportation Research Branch, Calspan Advanced Technology Center

Lana Batts, Vice President for Policy, American Trucking Association

Karl-Heinz Faber, Vice President for Product Compliance, Mercedes-Benz of North America

Farrell Krall, Manager, Technical Legislation, Navistar Technical Center

Robert Rogers, Director, Automotive Safety Engineering, General Motors Corporation

Larry Smith, Chief Engineer, Vehicle Safety Management, Chrysler Corporation

Robert Munson, Director, Automotive Safety Office, Ford Motor Company

William Shapiro, Regulatory Affairs Manager, Product Planning and Development, Volvo North American Car Operations

This meeting will include a presentation of NHTSA's motor vehicle research program and will turn to a discussion of research areas that are suitable for the Committee to pursue.

The meeting is open to the public and participation by the public will be determined by the Committee Chairman.

A docket will be established to contain the products of the Committee and will be open to the public during the hours of 8:00 a.m. to 4:00 p.m. in the National Highway Traffic Safety Administration's Technical Reference Division.

**For Further Information Contact:** Mary A. Coyle, Office of Research and Development, 400 7th Street, SW., Room



6206, Washington, DC 20590, 202/366-1537.

Howard M. Smolkin,

Chairman, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 87-27115 Filed 11-24-87; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP85-19; Notice 2]

**Volkswagen of America, Inc.; Grant of Petition for Determination of Inconsequential Noncompliance**

This notice grants the petition by Volkswagen of America, of Troy, Michigan, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.105, Motor Vehicle Safety Standard No. 105, *Hydraulic Brake Systems*. The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on December 9, 1985, and an opportunity afforded for comment (50 FR 50248).

Section S5.3.2 of Federal Motor Vehicle Safety Standard No. 105 requires that:

"All indicator lamps shall be activated as a check of lamp function either when the ignition (start) switch is turned to the on (run) position when the engine is not running, or when the ignition (start) switch is in a position between on (run) and start that is designated by the manufacturer as a check position."

During a compliance check of the Audi 5000S, the National Highway Traffic Safety Administration discovered that the parking brake of the Audi 5000S must be engaged or "on" before the vehicles will meet the requirement of paragraph S5.3.2. That is, the "Park" lamp does not illuminate when the ignition switch is in the specified positions unless the parking brake is engaged.

Volkswagen indicated that the noncompliance involved the Audi 5000S and Audi 5000 Turbo and amounted to 112,862 vehicles manufactured between January 1983 to May 1985. VW stated that the situation in no way affects the parking brake system function, and that the only effect is that the parking brake must be actually engaged to activate the indicator lamp.

Volkswagen stated that, in most circumstances, the operator is fully aware of parking brake engagement because, in addition to the indicator lamp being illuminated, the car will

either not move, move with great difficulty, or move with a noticeable resistance. Volkswagen believes that these facts preclude any unsafe condition, such as excess rear brake wear or rear brake fade, even in the event that the bulb does not function. Only in unusual circumstances would the parking brake application be unnoticed. These circumstances would require that the parking brake warning bulb not function (a rare event as documented in other petitions) and the parking brake be only partially engaged, so that any reduction in vehicle engine performance would be unnoticed.

One comment was received on the petition, from the law offices of Berliner and Mahoney, Washington, DC, which supported it.

NHTSA agrees with Volkswagen's arguments and has concluded that the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1415); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on November 20, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-27195 Filed 11-24-87; 8:45 am]

BILLING CODE 4910-59-M

**DEPARTMENT OF THE TREASURY**

**Advisory Group to the Commissioner of Internal Revenue; Rechartering**

Pursuant to the Federal Advisory Committee Act of October 6, 1972, Pub. L. 92-463, as amended, and with the approval of the Secretary of the Treasury, announces the rechartering of the following advisory committee:

*Title:* The Advisory Group to the Commissioner of Internal Revenue.

The primary purpose of the Advisory Group is to provide an organized public forum for discussions of relevant tax administration issues between officials of IRS and representatives of the public. The Advisory Group also offers constructive observations about IRS' current or proposed policies, programs, and procedures and, where necessary, suggests ways to improve IRS' operations.

The Commissioner and other senior officials receive from the Advisory Group a significant amount of information about the problems taxpayers encounter not only in dealing with IRS but also in meeting obligations imposed on them statutorily. The Service uses the advice of the Advisory

Group to develop a tax administration system which reflects the simplest, most equitable approach to administering the tax system that it is within our power to pursue. Accordingly, the Advisory Group conveys to the Service the public's perceptions of IRS activities.

The services of the Advisory Group are expected to be needed for an indefinite period of time. No termination date has been established which is less than two years from the date this Charter has been approved.

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended) the Department of the Treasury has rechartered the Advisory Group to the Commissioner of Internal Revenue for a two-year period beginning November 21, 1987.

Dated: November 18, 1987.

John F.W. Rogers,

Assistant Secretary of the Treasury (Management).

[FR Doc. 87-27104 Filed 11-24-87; 8:45 am]

BILLING CODE 4810-25-M

**Customs Service**

[T.D. 87-140]

**Customs Broker's License; Revocation by Operation of Law of Customhouse Broker's License No. 5466 (San Diego District)**

Pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), notice is hereby given that customhouse broker's license No. 5466 of Cal-Asia International, Inc., is revoked by operation of law.

Dated: November 17, 1987.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 87-27078 Filed 11-24-87; 8:45 am]

BILLING CODE 4820-02-M

**VETERANS ADMINISTRATION**

**Agency Form Under OMB Review**

**AGENCY:** Veterans Administration.

**ACTION:** Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6)



who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504 (h) of Pub. L. 96-511 applies.

**ADDRESSES:** Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: November 19, 1987.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

#### Extension

1. Department of Veterans Benefits.
2. Application for Fee Personnel Designation.
3. VA Form 26-6681.
4. This form is used to obtain information on professional experience from applicants for evaluation by panels for possible VA fee appraiser or compliance inspector designation.
5. On occasion.
6. Individuals or households.

7. 5,600 responses.
8. 1,867 hours.
9. Not applicable.
1. Department of Veterans Benefits.
2. Notice for Election to Convey and/or Invoice for Transfer of Property.
3. VA Form 26-8903.
4. This form is used to notify VA of the conveyance of a property to VA incident to foreclosure.
5. On occasion.
6. Businesses or other for-profit.
7. 30,000 responses.
8. 5,000 hours.
9. Not applicable.

1. Department of Veterans Benefits.
2. Certification of Loan Disbursement.
3. VA Form 26-1876.
4. This information is used to provide data on terms and closing for loan examination determinations that requirements have been met, terms of loan and conditions affecting the property are in compliance with VA regulations, and are substantially those on which VA based its prior approval.
5. On occasion.
6. Individuals or households, and Businesses or other for-profit.
7. 90,000 responses.
8. 45,000 hours.
9. Not applicable.

1. Department of Veterans Benefits.
2. Application and Enrollment Certification for Individualized Tutorial Assistance.
3. VA Form 22-1990t.
4. This form is used by students who are receiving VA educational assistance and who require tutoring to overcome a

deficiency in one or more courses. The application information from the claimant must be certified by the tutor and the educational institution.

5. On occasion.
6. Individuals or households; State or local governments; Businesses or other for-profit; and Non-profit institutions.
7. 7,000 responses.
8. 3,500 hours.
9. Not applicable.

1. Department of Veterans Benefits.
2. Statement of Disappearance.
3. VA Form 21-1775.
4. This form is used to gather the necessary information from individuals to determine if a decision of presumptive death can be made for benefit payments purposes.

5. On occasion.
6. Individuals or households.
7. 2,000 responses.
8. 5,500 hours.
9. Not applicable.

1. Department of Veterans Benefits.
2. Application for Automobile or Other Conveyance and Adaptive Equipment.

3. VA Form 21-4502.
4. This form is used for the purpose of gathering the necessary information required to properly determine eligibility to these benefits.
5. On occasion.
6. Individuals or households.
7. 1,500 responses.
8. 375 hours.
9. Not applicable.

[FR Doc. 87-27159 Filed 11-24-87; 8:45 am]

BILLING CODE 8320-01-W



# Sunshine Act Meetings

Federal Register

Vol. 52, No. 227

Wednesday, November 25, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## NUCLEAR REGULATORY COMMISSION

**DATE:** Weeks of November 23, 30, December 7, and 14, 1987.

**PLACE:** Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

**STATUS:** Open and Closed.

### MATTERS TO BE CONSIDERED:

#### Week of November 23

*Wednesday, November 25*

10:00 a.m.

Discussion/Possible Vote on Full Power Operating License for Palo Verde-3 (Public Meeting)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting)  
a. Response to Pending Motions Before the Commission in the Seabrook Proceeding (Postponed from November 19)

#### Week of November 30—Tentative

*Monday, November 30*

2:00 p.m.

Briefing by Combustion Engineering on New Standard Plants (Public Meeting)

*Tuesday, December 1*

10:00 a.m.

Briefing on Status of Implementation of Fitness for Duty Program (Public Meeting)

2:00 p.m.

Briefing on New Westinghouse Standardized Plants (Public Meeting)

*Wednesday, December 2*

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

#### Week of December 7—Tentative

*Thursday, December 10*

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

#### Week of December 14—Tentative

*Thursday, December 17*

9:30 a.m.

Periodic Briefing on Status of Operating Reactors and Fuel Facilities (Public Meeting)

2:00 p.m.

Discussion/Possible Vote on Full Power Operating License for South Texas (Public Meeting) (Tentative)

**Note.**—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

### TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING) (202) 634-1498.

### CONTACT PERSON FOR MORE

**INFORMATION:** Andrew Bates (202) 634-1410.

Andrew L. Bates,

Office of the Secretary.

November 19, 1987.

[FR Doc. 87-27210 Filed 11-23-87; 10:20 am]

BILLING CODE 7590-01-M

## RAILROAD RETIREMENT BOARD

Notice is hereby given that the Railroad Retirement Board will hold a meeting on December 1, 1987, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

- (1) Final Rule Regulation on Primary Insurance Amount Determinations
- (2) Amendment of Consolidated Board Order 75-5
- (3) Proposed Changes in the RUIA Regulations
- (4) Special Service Award Recommendation 87-12-G
- (5) Transfer of Functions
- (6) Review of and Proposal for RRB Automation Efforts of August 31, 1987
- (7) FTE Allocation for FY 88
- (8) Repayment of the RUIA Loan
- (9) Appeal of Nonwaiver of Overpayment, Thomas McCarthy
- (10) Performance Appraisal of the Executive Director, Fiscal Years 1986-1987

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 386-4920.

Dated: November 19, 1987.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 87-27213 Filed 11-23-87; 10:21 am]

BILLING CODE 7905-01-M



# Corrections

Federal Register

Vol. 52, No. 227

Wednesday, November 25, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-30262A/30265A; FRL-3289-9]

### Certain Companies; Approval of Pesticide Product Registrations; Great Lakes Chemical Corp. et al.

#### Correction

In notice document 87-26106 appearing on page 43392 in the issue of Thursday, November 12, 1987, make the following correction:

On page 43392, in the first column, under **SUPPLEMENTARY INFORMATION**, in the seventh line from the bottom, "No. 337-" should read "No. 3377-".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-36149; FRL-3290-2]

### Pesticide Registration Standards; Schedule and Availability of Docket Indices; Pesticide Special Reviews; Availability of Docket Indices

#### Correction

In notice document 87-26105 beginning on page 43392 in the issue of Thursday, November 12, 1987, make the following correction:

On page 43393, in the second column, in the table, in the 29th line, of the first column, the entry should read "acid (2,4-DB)".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59838; FRL-3286-7]

### Toxic Substances; Certain Chemicals Premanufacture Notices

#### Correction

In notice document 87-25384 beginning on page 42718 in the issue of Friday, November 6, 1987, make the following correction:

On page 42719, in the first column, under **Y 88-25**, in the first line, remove "Federal Register".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51699; FRL-3286-6]

### Toxic Substances; Certain Chemicals Premanufacture Notices

#### Correction

In notice document 87-25385 beginning on page 42719 in the issue of Friday, November 6, 1987, make the following corrections:

1. On page 42719, in the third column, under **P 88-100**, in the third line, "polyacrylate" was misspelled.

2. On page 42721, in the first column, under **P 88-131**, in the third line from the bottom, "<5,000" should read ">5,000".

3. On the same page, in the second column, under **P 88-132**, in the last line, "<20 mg/kg" should read ">20 mg/kg".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51700; FRL-3288-6]

### Toxic Substances; Certain Chemicals Premanufacture Notices

#### Correction

In notice document 87-25736 beginning on page 42721 in the issue of Friday,

November 6, 1987, make the following corrections:

1. On page 42721, in the third column, under **P 88-137**, in the second line, "Methacrylic" was misspelled.

2. On page 42722, remove the coding "T3" wherever it appears.

3. On the same page, in the first column, under **P 88-145**, in the fifth line, "hear" should read "heat".

4. On page 42722, in the third column, and on page 42723, in the first column, insert a period everywhere the word "Prod" appears without a period.

5. On page 42723, in the first column, under **P 88-163**, in the third line, "Intermediate" was misspelled.

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

21 CFR Parts 440 and 455

[Docket No. 87N-0312]

### Antibiotic Drugs; Sterile Sulbactam Sodium, Sterile Ampicillin Sodium and Sulbactam Sodium

#### Correction

In rule document 87-25478 beginning on page 42287 in the issue of Wednesday, November 4, 1987, make the following corrections:

#### § 440.9a [Corrected]

1. On page 42288, in the third column, in § 440.9a(b)(1)(ii)(d)(4), the top line of the formula should read, " $A_u \times P_s \times 100$ ".

#### § 455.82a [Corrected]

2. On page 42290, in the second column, in § 455.82a(b)(1)(iii)(D), in the third line insert "in" before "percent".

3. On the same page, in the third column, in § 455.82a(b)(1)(iv), the bottom line of the formula should read, " $A_s \times C_u \times (100-m)$ ".

BILLING CODE 1505-01-D



# Environmental Protection

1. The first of the two main sections of the report is devoted to a general survey of the environmental situation in the country. It begins with a description of the natural resources and the impact of human activities on them. The second part of the section deals with the various types of pollution and the measures taken to control them.

2. The second main section of the report is devoted to a detailed study of the water resources of the country. It begins with a description of the water resources and the impact of human activities on them. The second part of the section deals with the various types of water pollution and the measures taken to control them.

3. The third main section of the report is devoted to a detailed study of the air resources of the country. It begins with a description of the air resources and the impact of human activities on them. The second part of the section deals with the various types of air pollution and the measures taken to control them.

4. The fourth main section of the report is devoted to a detailed study of the soil resources of the country. It begins with a description of the soil resources and the impact of human activities on them. The second part of the section deals with the various types of soil pollution and the measures taken to control them.

5. The fifth main section of the report is devoted to a detailed study of the forest resources of the country. It begins with a description of the forest resources and the impact of human activities on them. The second part of the section deals with the various types of forest pollution and the measures taken to control them.

6. The sixth main section of the report is devoted to a detailed study of the marine resources of the country. It begins with a description of the marine resources and the impact of human activities on them. The second part of the section deals with the various types of marine pollution and the measures taken to control them.

7. The seventh main section of the report is devoted to a detailed study of the urban resources of the country. It begins with a description of the urban resources and the impact of human activities on them. The second part of the section deals with the various types of urban pollution and the measures taken to control them.

8. The eighth main section of the report is devoted to a detailed study of the agricultural resources of the country. It begins with a description of the agricultural resources and the impact of human activities on them. The second part of the section deals with the various types of agricultural pollution and the measures taken to control them.

9. The ninth main section of the report is devoted to a detailed study of the industrial resources of the country. It begins with a description of the industrial resources and the impact of human activities on them. The second part of the section deals with the various types of industrial pollution and the measures taken to control them.

10. The tenth main section of the report is devoted to a detailed study of the energy resources of the country. It begins with a description of the energy resources and the impact of human activities on them. The second part of the section deals with the various types of energy pollution and the measures taken to control them.



# Register Federal Register

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Wednesday  
November 25, 1987

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## Part II

### Department of Education

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34 CFR Part 653

Paul Douglas Teacher Scholarship  
Program; Final Regulations and Notice of  
Proposed Rulemaking



## DEPARTMENT OF EDUCATION

## 34 CFR Part 653

## Paul Douglas Teacher Scholarship Program

AGENCY: Department of Education.

ACTION: Final regulations.

**SUMMARY:** The Secretary amends the regulations governing the actions of designated State agencies in their administration of the Paul Douglas Teacher Scholarship Program (formerly known as the Congressional Teacher Scholarship Program). These regulations implement the Higher Education Technical Amendments Act of 1987 (Technical Amendments), which amended the Higher Education Act of 1965. In addition to changing the name of the program to the "Paul Douglas Teacher Scholarship Program," the Technical Amendments revised the provision specifying where scholars may teach to fulfill their teaching obligation and the provision governing the interest rate charged to scholars who fail to meet the terms of their scholarship agreements. The Technical Amendments also placed a limit on the length of the deferment of repayment for a scholarship recipient who is seeking but unable to find full-time employment as a teacher.

**EFFECTIVE DATES:** These regulations take effect either 45 days after publication in the *Federal Register* or later if the Congress takes certain adjournments.

When these regulations take effect, section 27 of the Technical Amendments provides that all the changes contained in these regulations, including the applicable interest rates, take effect retroactively to October 17, 1986.

If you want to know the effective date of these regulations, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Gold, Program Specialist, State Student Incentive Grant Program, Office of Postsecondary Education, U.S. Department of Education (Room 4018, ROB-3), 400 Maryland Avenue SW., Washington, DC 20202. Telephone (202) 732-4507.

**SUPPLEMENTARY INFORMATION:** On June 3, 1987, President Reagan signed the Higher Education Technical Amendments Act of 1987 (Technical Amendments) (101 Stat 335 et seq.), which amended the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1001 et seq.). The Technical Amendments provided that the statutory

changes to the Congressional Teacher Scholarship Program, which these regulations implement, were effective as of October 17, 1986 (the date of enactment of the Higher Education Amendments of 1986).

As a result of the Technical Amendments, the Congressional Teacher Scholarship Program was renamed the Paul Douglas Teacher Scholarship Program. This name change honors the memory of a distinguished Illinois senator who served in the United States Senate from 1948 to 1966. (Under the original authorizing legislation (Pub. L. 98-558), this program was known as the Carl D. Perkins Scholarship Program. The Higher Education Amendments of 1986 had changed the name of the program to the Congressional Teacher Scholarship Program.)

The purpose of the Paul Douglas Teacher Scholarship Program is to provide scholarships to encourage and enable outstanding high school graduates to pursue teaching careers. The legislation requires that a scholarship recipient teach on a full-time basis for two years for each year of scholarship assistance. Previously, the scholar's teaching obligation could be fulfilled by teaching in a public or private nonprofit preschool, elementary school, or secondary school in any State, or in a public preschool, elementary, or secondary education program in any State. Now, recipients have the additional option of teaching in a private nonprofit preschool, elementary, or secondary education program. However, as in the past, teaching in a proprietary (private profitmaking) institution does not fulfill the teaching obligation.

A scholar who does not complete the teaching obligation is required to repay the amount of the scholarships he or she has received, prorated according to the fraction of the teaching obligation not completed, plus interest and collection fees. The statutory language in the original authorizing legislation (Pub. L. 98-558) provided that the rate of interest to be charged to scholars who failed to comply with the terms of their scholarship agreements was to be prescribed by the Secretary through the issuance of regulations. Section 653.42(c)(1) of the final regulations for the Carl D. Perkins Scholarship Program published in the *Federal Register* on October 6, 1986 (51 FR 35582-35591) established the interest rate "at a rate which is the greater of—(i) Fourteen percent; or (ii) Five percent above the average of the bond equivalent rates of 91-day Treasury bills auctioned during the most recent quarter ending March 31." The Secretary established a

substantial interest rate for repayment to ensure that the program attracted individuals who were committed to teaching, to discourage the use of the scholarship program as a loan program, and to discourage scholars who have begun teaching from leaving the profession.

As a result of the Technical Amendments, there is now a statutory limit on the rate of interest which may be charged. The interest rate charged for scholarship repayments may not be higher than the interest rate applicable to loans for the same period under Part B of Title IV of the Act (which governs the Guaranteed Student Loans, PLUS Loans, Supplemental Loans for Students (SLS), and Consolidation Loans). For the same reasons as those mentioned above for establishing a substantial interest rate, the Secretary is establishing the interest rate for scholarship repayments at a rate which is the *higher of*—(i) The rate charged to new borrowers under the GSL Program or (ii) The rate charged to new borrowers under the SLS and PLUS Programs.

Notification of the interest rate applicable to the Paul Douglas Teacher Scholarship Program shall be provided through publication in the *Federal Register* of the interest rate applicable to the SLS and PLUS Programs. The GSL rate is established by statute at section 427A of the HEA.

Prior to the enactment of the Technical Amendments, the interest charge for scholarship repayments was to be adjusted annually for the twelve-month period extending from April 1 through March 31 of the subsequent year. Although there will continue to be an annual adjustment of the interest charge, the Secretary is revising the twelve-month period to which the adjustment applies. Since the interest rate for scholarship payments will now be reflective of the interest rate charged for the HEA Title IV, Part B loan programs, the Secretary is revising the twelve-month period to July 1 through June 30 so that the period coincides with the twelve-month period applicable to variable-rate SLS and PLUS loans. (Per section 427A(c) of the Act, the variable interest rate for SLS and PLUS loans for the twelve-month period equals 3.25 percent plus the bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to June 1.)

The highest rate charged to new borrowers under the GSL Program or the SLS and PLUS Programs for the period beginning on October 17, 1986 and ending June 30, 1987, was 12 percent. Therefore, according to the new regulatory formula established by the



Secretary and contained in this regulation, the interest rate to be charged for scholarship repayments for that period is 12 percent.

The highest rate being charged to new borrowers under the GSL Program or the SLS and PLUS Programs for the twelve-month period beginning July 1, 1987, and ending June 30, 1988, is 10.27 percent. Therefore, based on the interest rate formula in this regulation, the interest rate to be charged for scholarship repayments for this same period is 10.27 percent.

A scholarship recipient who is unable to satisfy the terms of his or her repayment schedule and who is seeking but unable to find full-time employment as a teacher may request a deferment of repayment. Prior to the Technical Amendments, there was no statutory limit on the number of periods or length of time for which this deferment could be granted. In light of the Technical Amendments, § 653.42(g)(6) of the program regulations has been revised to limit the deferment to a single period not to exceed 27 months.

#### Concurrent Publication as Proposed Rule

In this issue of the Federal Register, the Secretary is also issuing the regulations governing the interest rate provision as a Notice of Proposed Rulemaking. This is intended to provide the public with an opportunity to comment on the interest rate formula.

#### Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

#### Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. State educational agencies administer the program. States and State agencies are not small entities under the Regulatory Flexibility Act.

#### Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

#### Assessment of Educational Impact

The Secretary has determined that the regulations in this document would not require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

#### Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the enactment of the Technical Amendments requires the Secretary to revise the program provisions regarding the name of the program, the scholar's teaching obligation, and the length of one of the deferment periods. Since the regulations that incorporate these statutory changes merely incorporate provisions of the new law that Congress has already made effective retroactively to October 17, 1986, public comment could have no effect on the substance of these changes. Therefore, the Secretary finds that publication of a proposed rule regarding these provisions is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

The Technical Amendments also require the Secretary to revise the interest rate provision. Because the amendment to the interest rate provision is also effective retroactively to October 17, 1986, the scholarship agreements that the State agencies are currently using do not reflect accurate interest rate information. The State agencies, however, cannot update their agreements to reflect the statutory amendment until the Secretary establishes a new interest rate by regulation. Since it is imperative that State agencies revise their scholarship agreements as soon as possible to reflect as well as adhere to the statutory limit on the interest rate, the Secretary finds that publication of a proposed rule implementing the new interest rate provision is impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B).

#### List of Subjects in 34 CFR Part 653

Education, grant programs, Education, state-administered, Education, student aid.

(Catalog of Federal Domestic Assistance Number 84.176: Paul Douglas Teacher Scholarship Program)

Dated: November 4, 1987.

William J. Bennett,  
Secretary of Education.

The Secretary revises Part 653 of Title 34 of the Code of Federal Regulations to read as follows:

### PART 653—PAUL DOUGLAS TEACHER SCHOLARSHIP PROGRAM

#### Subpart A—General

Sec.

- 653.1 What is the Paul Douglas Teacher Scholarship Program?
- 653.2 Who is eligible to participate in this program?
- 653.3 What regulations apply to this program?
- 653.4 What definitions apply to this program?

#### Subpart B—What Assistance Does the Secretary Provide Under This Program?

- 653.10 For what purposes may a State use its payments under this program?

#### Subpart C—How Does a State Apply for Grants?

Sec.

- 653.20 What must a State do to receive grants under this program?
- 653.21 What requirements must be met by States in the administration of this program?

#### Subpart D—How Does a State Select Scholars Under This Program?

- 653.30 What are the eligibility requirements?
- 653.31 Who selects the scholars?
- 653.32 What are the selection criteria and procedures?

#### Subpart E—What Are the Scholarship Conditions?

- 653.40 What agreement must a scholar have with the State agency?
- 653.41 What are the requirements for a scholar to continue to receive payments under this program?
- 653.42 What are the consequences of a scholar's noncompliance with the teaching requirement?

Authority: 20 U.S.C. 1111-1111h, unless otherwise noted.

#### Subpart A—General

##### § 653.1 What is the Paul Douglas Teacher Scholarship Program?

Under the Paul Douglas Teacher Scholarship Program the Secretary makes available, through grants to the States, scholarships to eligible individuals to enable and encourage them to pursue teaching careers at the preschool, elementary, or secondary school level.

(Authority: 20 U.S.C. 1111)



**§ 653.2 Who is eligible to participate in this program?**

- (a) States are eligible to apply for grants under this program.
- (b) Outstanding high school graduates who wish to pursue teaching careers at the preschool, elementary, or secondary level are eligible to apply to their respective States of residence for scholarships under this program.

(Authority: 20 U.S.C. 1111b *et seq.*)

**§ 653.3 What regulations apply to this program?**

The following regulations apply to the Paul Douglas Teacher Scholarship Program:

- (a) The regulations in this Part 653.
- (b) The Education Department General Administration Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Educational Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(Authority: 20 U.S.C. 1111-1111h *et seq.*)

**§ 653.4 What definitions apply to this program?**

The following definitions apply to terms used in this part:

- (a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Application  
EDGAR  
Elementary school  
Nonprofit  
Preschool  
Private  
Public  
Secondary school  
Secretary  
State  
State educational agency

- (b) *Other definitions that apply to this part.* The following additional definitions apply to this part:

"Academic year" means a period of time during which a full-time student is expected to complete the equivalent of one of the following:

- (1) Two semesters.
- (2) Two trimesters.
- (3) Three quarters.

"Act" means the Higher Education Act of 1965, as amended.

"Award year" means the period of time from July 1 of one year through June 30 of the following year.

"Full-time student" means a student enrolled in an institution of higher education, other than a correspondence school, who is carrying a full-time

academic workload as determined by the institution under standards applicable to all students enrolled in that student's program.

"Institution of higher education" has the same meaning under this part as the same term defined in 34 CFR 668.3 of the Student Assistance General Provisions regulations.

"Scholar" means a scholarship recipient.

"Scholarship" means an award made to an individual under this part for one academic year.

(Authority: 20 U.S.C. 1111-1111h)

**Subpart B—What Assistance Does the Secretary Provide Under This Program?****§ 653.10 For what purposes may a State use its payments under this program?**

A State may use its payments under the Paul Douglas Teacher Scholarship Program, including principal and interest payments it receives from scholars under § 653.42, only for making payments to scholars.

(Authority: 20 U.S.C. 1111)

**Subpart C—How Does a State Apply for Grants?****§ 653.20 What must a State do to receive grants under this program?**

- (a) To receive grants under the Paul Douglas Teacher Scholarship Program, a State shall submit an application to the Secretary for review and approval.

(b) The Secretary approves an application that—

- (1) Designates as the State agency for the administration of the Paul Douglas Teacher Scholarship Program, either—

(i) The State agency which administers the State Student Incentive Grants Program under Title IV, Part A, Subpart 3 of the Act; or

(ii) The State agency which administers the Guaranteed Student Loan Program and with which the Secretary has an agreement under section 428(b) of the Act;

(2) Identifies the panel or agency which has established criteria and procedures for the selection of scholars and will select the scholars as required by §§ 653.31 and 653.32;

(3) Describes a program of activities for carrying out the purposes set forth in § 653.1 in such detail that the Secretary may determine the degree to which the State's program will accomplish those purposes. This description must include—

- (i) The selection criteria and procedures to be used by the State, in the selection of scholars, which satisfy the provisions of this part; and

(ii) The procedures by which the designated State agency intends to publicize the availability of Paul Douglas Teacher Scholarships to secondary school students in the State;

(4) Explains how the criteria and procedures for the selection of scholars were developed and in what ways they reflect the State's present and projected needs for preschool, elementary, and secondary teachers in general and for those with training in specific academic disciplines;

(5) Provides assurances that—

(i) No changes will be made in the designations of an agency to administer the Paul Douglas Teacher Scholarship Program, in the selection criteria and procedures to be used in the selection of scholars, or any other aspect of the program of activities described in its application without the prior written approval of the Secretary;

(ii) No one will receive a Paul Douglas Teacher Scholarship without entering into an agreement with the designated State agency under which he or she agrees to the terms specified in § 653.40;

(iii) The terms and conditions of the agreement which the State agency will enter into with scholars under § 653.40 will be fully disclosed in the scholarship application form;

(iv) The State agency will monitor scholars' compliance with the provisions of §§ 653.40, 653.41(b), and 653.42;

(v) The State agency will make particular efforts to attract students from low-income backgrounds or who express a willingness or desire to teach in schools having less than average academic results or serving large numbers of economically disadvantaged students; and

(vi) Scholarships will be awarded without regard to sex, race, handicapping condition, creed, or economic background; and

(6) Contains a copy of the agreement referred to in paragraph (b)(5)(ii) of this section.

(c) Upon the Secretary's approval of its application, a State need not submit additional applications in order to continue to be considered for funding under this program.

(Authority: 20 U.S.C. 1111b)

(Approved by the Office of Management and Budget under control number 1840-0578)

**§ 653.21 What requirements must be met by States in the administration of the program?**

(a) To continue to receive payments under this part, a State shall—

- (1) Provide scholarship assistance only to students who meet the



requirements of § 653.30, 653.40, and 653.041:

(2) Limit scholarship assistance to no more than four academic years for each scholar;

(3) Make reports to the Secretary that are necessary to carry out the Secretary's functions under this part;

(4) Establish and implement policies and procedures which are necessary to administer the repayment provisions of § 653.42 and, in cases of noncompliance with these provisions, implement collection and litigation procedures consistent with 34 CFR Part 682; and

(5) Except as otherwise provided in paragraph (d) of this section—

(i) Expend all funds received from the Secretary for scholarships during the award year specified by the Secretary with regard to those funds; and

(ii) Expend in that award year, for scholarships, all funds received by the State prior to that award year from principal and interest payments made under the provisions of § 653.42.

(b) A State shall award a scholarship in the amount of \$5,000 for an academic year, except as otherwise provided in paragraph (c) of this section.

(c) A State shall not award a scholarship which exceeds the scholar's cost of attendance. If a scholarship, when added to the amount the scholar is to receive for the same academic year under Title IV of the Act, would otherwise exceed the scholar's cost of attendance, as defined for the Perkins Loan Program in 34 CFR 674.11, the State shall reduce the scholarship by the amount in which the combined awards would be in excess of the scholar's cost of attendance.

(d) After awarding all scholarships for payment during an award year, as required by paragraph (a)(5) of this section, a State may reserve for expenditures in the following award year a remaining amount of funds which is less than the amount required for a scholarship as well as any funds that were awarded but were returned or not expended.

(Authority: 20 U.S.C. 1111c, 1111d, 1111e)

#### Subpart D—How Does a State Select Scholars Under This Program?

##### § 653.30 What are the eligibility requirements?

To be selected as a scholar, an individual shall—

(a)(1) Be a United States citizen or National;

(2) Provide evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(3) Be a permanent resident of the Trust Territory of the Pacific Islands;

(b)(1) Have graduated from high school;

(2) Be scheduled to graduate from high school within 3 months of the date of the award; or

(3) Have received a certificate of high school equivalency for successfully completing the Tests of General Educational Development (GED); and

(c)(1) Rank in the top ten percent of his or her graduating class; or

(2) Have received GED test scores recognized by the State to be equivalent to ranking in the top ten percent of the high school graduates in the State, or nationally, in the academic year for which the eligibility determination is being made.

(Authority: 20 U.S.C. 1111d)

##### § 653.31 Who selects the scholars?

(a) Scholars must be selected by—

(1) A seven-member statewide panel appointed by the chief State elected official, acting in consultation with the State educational agency;

(2) An existing grant agency designated by the chief State elected official and approved by the Secretary; or

(3) An existing panel designated by the chief State elected official and approved by the Secretary.

(b) A selection panel must be representative of school administrators, teachers, and parents.

(Authority: 20 U.S.C. 1111d)

##### § 653.32 What are the selection criteria and procedures?

(a) The panel or agency appointed or designated by the chief State elected official in accordance with § 653.31 shall establish criteria and procedures for the selection of scholars.

(b) The selection criteria and procedures must reflect the present and projected needs of the State for preschool, elementary, and secondary teachers as required by section 553(c) of the Act and must be developed after consideration of the views of the State and local educational agencies, private educational institutions, and other interested parties as required by section 553(d) of the Act.

(c) The State shall make applications available to high schools in the State, and in other locations convenient to applicants, parents, and other interested parties.

(d) The panel or agency referred to in paragraph (a) of this section shall select

scholars without regard to whether applicants plan to attend publicly or privately controlled institutions.

(Authority: 20 U.S.C. 1111b, 1111d)

#### Subpart E—What Are the Scholarship Conditions?

##### § 653.40 What agreement must a scholar have with the State agency?

(a) To receive a scholarship, an individual shall enter into an agreement with the State agency under which he or she agrees, except as otherwise provided in paragraph (b) of this section—

(1) To teach on a full-time basis, as determined by the institution or agency in which he or she is teaching, for a period of not less than two years for each year for which scholarship assistance was received—

(i) In a public or private nonprofit preschool, elementary school, or secondary school in any State; or

(ii) In a public or private nonprofit preschool, elementary, or secondary education program in any State;

(2) To fulfill the teaching obligation described in paragraph (a)(1) of this section within ten years after completing the postsecondary education degree program for which the scholarship was awarded;

(3) To provide the State agency evidence of compliance with paragraphs (a) (1) and (2) of this section and § 653.41 as required by the State agency; and

(4) To repay all or part of the scholarship plus interest and reasonable collection fees as specified in § 653.42 if the conditions of paragraphs (a) (1) and (2) of this section are not met or if the State agency determines that the individual is no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level.

(b) The requirement to teach two years for each year of scholarship assistance is reduced by one-half in the case of individuals who teach on a full-time basis in a teacher shortage area that is designated by the Secretary as provided by section 428(b)(4) of the Act.

(c) The agreement referred to in paragraph (a) of this section must include—

(1) A description of the procedures under which the provisions of § 653.42 (g) through (k) will be implemented; and

(2) A description of the procedures under which a scholar may appeal any determination of noncompliance with any provisions under this part.

(Authority: 20 U.S.C. 1111b)



(Approved by the Office of Management and Budget under control number 1840-0578)

**§ 653.41 What are the requirements for a scholar to continue to receive payments under this program?**

(a) A State agency shall continue to make payments to a scholar under this program only during the periods that the State agency finds that the scholar meets the conditions described in paragraph (b) of this section.

(b) To maintain eligibility for a scholarship, a scholar must be—

(1) Enrolled as a full-time student in an institution of higher education that is currently accredited by a nationally recognized accrediting agency or association that the Secretary determines to be a reliable authority as to the quality of training offered, in accordance with section 1201(a) of the Act;

(2) Pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, as determined by the State agency but not including graduate study that is not required for initial teacher certification; and

(3) Maintaining satisfactory progress as determined by the institution of higher education the student is attending, in accordance with the criteria established in 34 CFR 668.16(e) of the Student Assistance General Provisions regulations.

(Authority: 20 U.S.C. 1111e)

**§ 653.42 What are the consequences of a scholar's noncompliance with the teaching requirement?**

(a) A scholar found by a State to be in noncompliance with the agreement entered into under § 653.40, or to be no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, shall—

(1) Repay the amount of the scholarships received, prorated according to the fraction of the teaching obligation not completed, as determined by the State agency;

(2) Pay a simple, per annum interest charge on the outstanding principal; and

(3) Pay all reasonable collection costs as determined by the State agency.

(b) The interest charge referred to in paragraph (a)(2) of this section accrues from—

(1) The date of the initial scholarship payment if the State agency has determined that the scholar is no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level; or

(2) The day after that portion of the scholarship period for which the teaching obligation has been fulfilled.

(c)(1) The interest charge referred to in paragraph (a)(2) of this section is calculated annually for the program for the twelve-month period extending from July 1 of each year through June 30 of the subsequent year, and is set at a rate that is the greater of the following rates established pursuant to section 427A of the Act for the same twelve-month period:

(i) The rate charged to new borrowers under the Guaranteed Student Loan Program (Title IV, Part B of the Act).

(ii) The rate charged to new borrowers under the Supplemental Loans for Students and PLUS Programs (sections 428A and 428B of the Act, respectively) as published annually in the *Federal Register*.

(2) For a scholar required to repay his or her scholarship—

(i) The interest charge applicable to the period extending from the date on which interest begins to accrue (determined in accordance with paragraph (b) of this section) until the date on which the scholar's repayment period begins (determined in accordance with paragraph (d) of this section) is adjusted annually and is set at the rate established for the program in accordance with paragraph (c)(1) of this section; and

(ii) The interest charge applicable during the repayment period is the rate established for the program in accordance with paragraph (c)(1) of this section that is in effect on the date on which the scholar's repayment period begins.

(d) A scholar required by paragraph (a) of this section to repay his or her scholarship shall—

(1) Enter repayment status on the first day of this first calendar month after—

(i) The State has determined that the scholar is no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, but not before six months has elapsed after the cessation of the scholar's full-time enrollment in such a course of study;

(ii) The date the scholar informs the agency he or she does not plan to fulfill the teaching obligation; or

(iii) The latest date on which the scholar must have begun teaching in order to have completed the teaching obligation within ten years after completing the postsecondary education for which the scholarship was awarded, as determined by the State agency; and

(2) Make monthly or quarterly payments to the State which—

(i) Cover principal, interest, and collection costs according to a schedule established by the State which calls for complete repayment within ten years after the scholar enters repayment status, except as provided in paragraph (i) of this section; and

(ii) Amount annually to no less than \$1,200 or the unpaid balance, whichever is less, unless the scholar's inability to pay this amount because of his or her financial condition has been established to the State's satisfaction.

(e) The State agency shall not require scholarship repayments amounting to more than \$1,200 annually unless higher payments are needed to complete the entire repayment within the ten-year period described in paragraph (d)(2) of this section.

(f) The State agency shall capitalize any accrued interest at the time it establishes a scholar's repayment schedule.

(g) A scholar is not considered in violation of the repayment schedule established under paragraph (d) of this section during the time he or she is—

(1) Engaging in a full-time course of study at an institution of higher education;

(2) Serving, not in excess of three years, on active duty as a member of the armed services of the United States;

(3) Temporarily totally disabled, for a period not to exceed three years, as established by sworn affidavit of a qualified physician;

(4) Unable to secure employment for a period not to exceed twelve months by reason of the care required by a spouse who is disabled;

(5) Seeking and unable to find full-time employment for a single period not to exceed twelve months; or

(6) Unable to satisfy the terms of the repayment schedule established by the State under paragraph (d)(2)(i) of this section and is also seeking and unable to find full-time employment as a teacher in a public or private nonprofit preschool, elementary school, or secondary school, or in a public or private nonprofit preschool, elementary, or secondary education program for a single period not to exceed 27 months.

(h) To qualify for any of the exceptions in paragraph (g) of this section, a scholar shall notify the State agency of his or her claim to the exception and provide supporting documentation as required by the State agency.

(i) During the time a scholar qualifies for any of the exceptions in paragraph (g) of this section, he or she need not make the scholarship repayments



referred to in paragraph (d) of this section and interest does not accrue.

(j) The State agency shall extend the ten-year scholarship repayment period established under paragraph (d) of this section by a period equal to the length of time a scholar meets any of the conditions listed in paragraph (g) of this section or if a scholar's inability to complete the scholarship repayments within this ten-year period because of his or her financial condition has been established to the State's satisfaction.

(k) The State agency shall cancel a scholar's repayment obligation if it determines—

(i) On the basis of a sworn affidavit of a qualified physician, that the scholar is unable to teach on a full-time basis because of an impairment that is expected to continue indefinitely or result in death; or

(2) On the basis of a death certificate or other evidence, conclusive under State law, that the scholar has died.

[Authority: 20 U.S.C. 1111f, 1111g]

[FR Doc. 87-27042 Filed 11-24-87; 8:45 am]

BILLING CODE 4000-01-M



## DEPARTMENT OF EDUCATION

## 34 CFR Part 653

## Paul Douglas Teacher Scholarship Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Secretary issues proposed regulations governing the interest rate charged to scholarship recipients who are required to repay their scholarships under the Paul Douglas Teacher Scholarship Program (formerly known as the Congressional Teacher Scholarship Program, and prior to that, as the Carl D. Perkins Scholarship Program). The Secretary is interested in obtaining public comment on the interest rate formula contained in § 653.42(c) of the final regulations that are published in this same issue of the *Federal Register*. Based on the comments received, the Secretary, if necessary, will amend the final regulations accordingly.

**DATES:** Comments must be received on or before January 11, 1988.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to Bonnie Gold, Program Specialist, State Student Incentive Grant Program, Office of Postsecondary Education, U.S. Department of Education (Room 4018, ROB-3), 400 Maryland Avenue, SW., Washington, DC 20202. Telephone (202) 732-4507.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Gold, (202) 732-4507.

**SUPPLEMENTARY INFORMATION:** Background information on the Paul Douglas Teacher Scholarship Program and on the statutory and regulatory provisions governing the interest rate charged to recipients who must repay their scholarship assistance is provided in the preamble to the final regulations published in this same issue of the *Federal Register*.

## Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

## Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial

number of small entities. State educational agencies administer the program. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

## Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

## Invitation To Comment

Interested parties are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4018, ROB-3, 7th and D Streets SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

## Assessment of Educational Impact

The Secretary has determined that the regulations in this document would not require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

## List of Subjects in 34 CFR Part 653

Education, grant programs, Education, State-administered, Education, student aid.

(Catalog of Federal Domestic Assistance Number 84.176: Paul Douglas Teacher Scholarship Program)

Dated: November 4, 1987.

William J. Bennett,  
Secretary of Education.

The Secretary proposes to amend Part 653 of Title 34 of the Code of Federal Regulations as follows:

## PART 653—PAUL DOUGLAS TEACHER SCHOLARSHIP PROGRAM

1. The authority citation for Part 653 continues to read as follows:

Authority: 20 U.S.C. 1111 to 1111h, unless otherwise noted.

2. Section 653.42(c) is revised to read as follows:

**§ 653.42 What are the consequences of a scholar's noncompliance with the teaching requirement?**

(c)(1) The interest charge referred to in paragraph (a)(2) of this section is calculated annually for the program for the twelve-month period extending from July 1 of each year through June 30 of the subsequent year, and is set at a rate that is the greater of the following rates established pursuant to section 427A of the Act for the same twelve-month period:

(i) The rate charged to new borrowers under the Guaranteed Student Loan Program (Title IV, Part B of the Act).

(ii) The rate charged to new borrowers under the Supplemental Loans for Students and PLUS Programs (sections 428A and 428B of the Act, respectively) as published annually in the *Federal Register*.

(2) For a scholar required to repay his or her scholarship—

(i) The interest charge applicable to the period extending from the date on which interest begins to accrue (as determined in accordance with paragraph (b) of this section) until the date on which the scholar's repayment period begins (as determined in accordance with paragraph (d) of this section) is adjusted annually and is set at the rate established for the program in accordance with paragraph (c)(1) of this section; and

(ii) The interest charge applicable during the repayment period is the rate established for the program in accordance with paragraph (c)(1) of this section that is in effect on the date on which the scholar's repayment period begins.

[FR Doc. 87-27043 Filed 11-24-87; 8:45 am]  
BILLING CODE 4000-01-M



# 14 CFR Part 71

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Wednesday  
November 25, 1987

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## Part III

## Department of Transportation

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Federal Aviation Administration

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14 CFR Part 71

Proposed Establishment of Airport Radar  
Service Areas; Proposed Rulemaking



## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

[Airspace Docket No. 87-AWA-28]

## Proposed Establishment of Airport Radar Service Areas

**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish an Airport Radar Service Area (ARSA) at Evansville Dress Regional Airport, IN; Laughlin Air Force Base (AFB), TX; Midland Regional Airport, TX; Portland International Jetport, ME, and Springfield Capital Airport, IL. Each location is an airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of each ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at each of the affected locations would promote the efficient control of air traffic and reduce the risk of midair collision in terminal areas.

**DATES:** Comments must be received on or before March 2, 1988. Informal airspace meeting dates are as follows: Evansville Dress Regional Airport, IN—January 22, 1988; Laughlin AFB, TX—January 28, 1988; Midland Regional Airport, TX—January 26, 1988; Portland International Jetport, ME—January 26, 1988, and Springfield Capital Airport, IL—January 26, 1988.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Airspace Docket No. 87-AWA-28, 800 Independence Avenue, SW., Washington, DC 20591.

The informal airspace meeting places are as follows:

Evansville Dress Regional Airport, IN, ARSA

Time: 7:00 p.m.

Location: Sheraton Inn, 5701 U.S. 41 North, Evansville, IN

Laughlin AFB, TX, ARSA

Time: 7:00 p.m.

Location: Ole' Distribution Inc., The Churchwell Room, 111 Lowe Drive, Del Rio, TX

Midland Regional Airport, TX, ARSA

Time: 7:00 p.m.

Location: Midland College, Allison Fine Arts Auditorium, 3600 North Garfield, Midland, TX

Portland International Jetport, ME, ARSA

Time: 7:30 p.m.

Location: Portland International Jetport, Air Carrier Terminal Building, Conference Room, Second Floor, Portland, ME

Springfield Capital Airport, IL, ARSA

Time: 7:00 p.m.

Location: Capital Airport, Air National

Guard Mess Hall, Springfield, IL

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

The informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:**

Joe Gill, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

This notice involves five locations. Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWA-28." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

**Meeting Procedures**

In addition to seeking written comments on this proposal, the FAA will hold informal airspace meetings for the proposed ARSA locations in order to receive additional input with respect to the proposal. The dates, times, and places for these meetings are listed above. Persons who plan to attend the meetings should be aware of the following procedures to be followed:

(a) The meetings will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) There will be no admission fee or other charge to attend and participate. The meetings will be open to all persons on a space-available basis. The FAA representative may accelerate the agenda to enable early adjournment if the progress of the meetings is more expeditious than planned.

(c) The meetings will not be recorded. A summary of the comments made at these meetings will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meetings may be accepted. Participants submitting handout materials should present an original and two copies to the presiding officer. There should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meetings should not be taken as expressing a final FAA position.

**Agenda**

Presentation of Meeting Procedures  
FAA Presentation of Proposal  
Public Presentations and Discussion

**Background**

On April 22, 1982, the National Airspace Review (NAR) plan was published in the Federal Register (47 FR



17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR was the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1-2 concluded that TRSA's should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated ARSA, was the consensus recommendation.

In response, the FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83-9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining an ARSA and establishing air traffic rules for operation within such an area. Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, and Columbus, OH, airports and also at the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250; March 6, 1985). The FAA has stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSA's at locations other than those which are included in the TRSA replacement program. The task group recommended that these criteria take into account, among other things, traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. This criteria has been developed and is being published via the FAA directives system.

The FAA has established ARSA's at 93 locations under a paced implementation plan to replace TRSA's with ARSA's. This is one of a series of notices to implement ARSA's at locations with TRSA's or locations

without TRSA's which warrant implementation of an ARSA.

#### Related Rulemaking

This notice proposes ARSA designation at five locations identified as candidates for an ARSA in the preamble to Amendment No. 71-10 (50 FR 9252). Other candidate locations will be proposed in future notices published in the Federal Register.

#### The Current Situation at the Proposed ARSA Locations

A TRSA is currently in effect at all of the locations at which ARSA's are proposed in this notice. A TRSA consists of the airspace surrounding a designated airport where ATC provides radar vectoring, sequencing, and separation for all aircraft operating under instrument flight rules (IFR) and for participating aircraft operating under visual flight rules (VFR). TRSA airspace and operating rules are not established by regulation, and participation by pilots operating under VFR is voluntary, although pilots are urged to participate. This level of service is known as Stage III and is provided at all locations identified as TRSA's. The NAR task group recommended the replacement of most TRSA's with ARSA's.

A number of problems with the TRSA program were identified by the task group. The task group stated that because there are different levels of service offered within the TRSA, users are not always sure of what restrictions or privileges exist, or how to cope with them. According to the task group, there is a shared feeling among users that TRSA's are often poorly defined, are generally dissimilar in dimensions, and encompass more area than is necessary or desirable. There are other users who believe that the voluntary nature of the TRSA does not adequately address the problems associated with nonparticipating aircraft operating in relative proximity to the airport and associated approach and departure courses. There is strong advocacy among user organizations that terminal radar facilities should provide all pilots the same service, in the same way, and, to the extent feasible, within standard size airspace designations.

The provisions of FAR § 91.87 relating to an airport traffic area (ATA), while necessary, do not eliminate the problem identified by the task group. For example, aircraft operating under VFR to or from a satellite airport and within the ATA of the primary airport are excluded from the two-way radio communications requirement of § 91.87. This condition is acceptable until the volume and density of traffic at the

primary airport requires more complete ATC awareness and/or control of traffic in the area.

#### The Proposal

The FAA is considering an amendment to § 71.501 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish ARSA's at Evansville Dress Regional Airport, IN; Midland Regional Airport, TX; Portland International Jetport, ME, and Springfield Capital Airport, IL, which are public airports, and Laughlin AFB, TX, a military airport. They currently have nonregulatory TRSA's in effect. The proposed locations are depicted on charts in Appendix 1 to this notice.

FAA regulations, 14 CFR 91.88, define ARSA and prescribe operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA.

The ARSA rule provides in part that, prior to entering the ARSA, any aircraft arriving at any airport in an ARSA or flying through an ARSA must: (1) Establish two-way radio communications with the ATC facility having jurisdiction over the area, and (2) while in the ARSA, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport within the ARSA, two-way radio communications must be established as soon as practicable after takeoff with the ATC facility having jurisdiction over the area, and thereafter maintained while operating within the ARSA.

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize appropriate deviations to any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted under the terms of an ATC authorization.

The FAA adopted the NAR task group recommendation that each ARSA be of the same airspace configuration insofar as practicable. The standard ARSA consists of airspace within 5 nautical miles of the primary airport extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 nautical



miles from the primary airport from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviation from the standard has been necessary at some airports due to adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions, operating requirements, and specific airspace designations applicable to ARSA may be found in 14 CFR Part 71, § 71.14 and § 71.501, and Part 91, § 91.1 and § 91.88.

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation is not a "major rule" under Executive Order 12291 and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

### Regulatory Evaluation

The FAA has conducted a Regulatory Evaluation of the proposed establishment of these additional ARSA sites. The major findings of that evaluation are summarized below, and the evaluation is available in the regulatory docket.

#### a. Costs

Costs which potentially could result from the establishment of additional ARSA sites fall into the following categories:

- (1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.
- (2) Costs associated with the revision of charts, notification of the public, and pilot education.
- (3) Additional operating costs for circumnavigating or flying over the ARSA.
- (4) Potential delay costs resulting from operations within an ARSA.
- (5) The need for some operators to purchase radio transceivers.
- (6) Miscellaneous costs.

It has been the FAA's experience, however, that these potential costs do not materialize to any appreciable degree, and when they do occur, they are transitional, relatively low in magnitude, or attributable to specific implementation problems that have been experienced at a very small minority of ARSA sites. The reasons for these conclusions are presented below.

FAA expects that the additional ARSA sites proposed in this notice can be implemented without requiring additional controller personnel above current authorized, staffing levels, because participation in radar services at these locations is already quite high, and the separation standards permitted

in ARSA's will allow controllers to absorb the slight increase in participating traffic by handling all traffic much more efficiently. Further, because controller training will be conducted during normal working hours, and these facilities already operate the necessary radar equipment, FAA does not expect to incur any appreciable implementation costs. Essentially, the FAA will modify its terminal radar procedures at the proposed ARSA sites in a manner that will make more efficient use of existing resources.

No additional costs are expected to be incurred because of the need to revise sectional charts to incorporate the new ARSA airspace boundaries. Changes of this nature are routinely made during charting cycles, and the planned effective dates for newly established ARSA's are scheduled to coincide with the regular 6-month chart publication intervals.

This rulemaking proceeding and process will satisfy much of the need to notify the public and educate pilots about ARSA operations. The informal public meeting being held at each location where an ARSA is being proposed provides pilots with the best opportunity to learn both how an ARSA works and how it will affect their local operations. The expenses associated with these public meetings are considered costs attributable to the rulemaking process; however, any public information costs following establishment of a new ARSA are strictly attributable to the ARSA. The FAA expects to distribute a Letter to Airmen to all pilots residing within 50 miles of ARSA sites explaining the operation and configuration of the ARSA finally adopted. The FAA also has issued an Advisory Circular on ARSA's. The combined Letter to Airmen and prorate Advisory Circular costs have been estimated to be approximately \$500 for each ARSA site. This cost is incurred only once upon the initial establishment of an ARSA.

Information on ARSA's following the establishment of additional sites will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues and, therefore, will not involve additional costs strictly as a result of the ARSA program. Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings that will be held at each site following implementation of the ARSA which will allow users to provide feedback to the FAA on local ARSA operations. These meetings are

being held at public or other facilities which are being provided free of charge or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

FAA anticipates that some pilots who currently transit the terminal area without establishing radio communications or participating in radar services may choose to circumnavigate the mandatory participation airspace of an ARSA rather than participate. Some minor delay costs will be incurred by these pilots because of the additional aircraft variable operating cost and lost crew and passenger time resulting from the deviation. Other pilots may elect to overfly the ARSA, or transit below the 1,200 feet above ground level (AGL) floor between the 5- and 10-nautical-mile rings. Although this will not result in any appreciable delay, a small additional fuel burn will result from the climb portion of the altitude adjustment (which will be offset somewhat by the descent).

FAA recognizes that the potential exists for delay to develop at some locations following establishment of an ARSA. The additional traffic that the radar facilities will be handling as a result of the mandatory participation requirement may, in some instances, result in minor delays to aircraft operations. FAA does not expect such delay to be appreciable. FAA expects that the greater flexibility afforded controllers in handling traffic as a result of the separation standards allowed in an ARSA will keep delay problems to a minimum. Those that do occur will be transitional in nature, diminishing as facilities gain operating experience with ARSA's and learn how to tailor procedures and allocate resources to take fullest advantage of the efficiencies that an ARSA will permit. This has been the experience at most of the locations where ARSA's have been in effect for the longest period of time and is the recurring trend at the locations that have been more recently designated.

The FAA does not expect that any operator will find it necessary to install radio transceivers as a result of establishing the ARSA's proposed in this notice. Aircraft operating to and from primary airports already are required to have two-way radio communications capability because of existing airport traffic areas and, therefore, will not incur any additional costs as a result of the proposed ARSA's. Further, the FAA has made an



effort to minimize these potential costs throughout the ARSA program by providing airspace exclusions, or cutouts, for satellite airports located within 5 nautical miles of the ARSA center where the ARSA would otherwise have extended down to the surface. Procedural agreements between the local ATC facility and the affected airports have also been used to avoid radio installation costs.

At some proposed ARSA locations, special situations might exist where establishment of an ARSA could impose certain costs on users of that airspace. However, exclusions, cutouts, and special procedures have been used extensively throughout the ARSA program to alleviate adverse impacts on local fixed base and airport operators. Similarly, the FAA has eliminated potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight and banner towing activities, by developing special procedures to accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA does not expect that any such adverse impact will occur at the candidate ARSA sites proposed in this notice.

#### *b. Benefits*

Much of the benefit that will result from ARSA's is nonquantifiable and is attributable to simplification and standardization of ARSA configurations and procedures. Further, once experience is gained in ARSA operations, the flexibility allowed air traffic controllers in handling traffic within an ARSA will enable them to move traffic with both efficiency and increased safety.

Some of the benefits of the ARSA cannot be specifically attributed to individual candidate airports, but rather will result from the overall improvements in terminal area ATC procedures realized as ARSA's are implemented throughout the country. ARSA's have the potential of reducing both near and actual midair collisions at the airports where they are established. Based upon the experience at the Austin and Columbus ARSA confirmation sites, FAA estimates that near midair collisions may be reduced by approximately 35 to 40 percent. Further, FAA estimates that implementation of the ARSA program nationally may prevent approximately one midair collision every 1 to 2 years throughout the United States. The quantifiable benefits of preventing a midair collision can range from less than \$100,000, resulting from the prevention of a minor

nonfatal accident between general aviation aircraft, to \$300 million or more, resulting from the prevention of a midair collision involving a large air carrier aircraft and numerous fatalities. Establishment of ARSA's at the sites proposed in this notice will contribute to these improvements in safety.

#### *c. Comparison of Costs and Benefits*

A direct comparison of the costs and benefits of this proposal is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, and it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual candidate ARSA sites.

FAA expects that any adjustment problems that may be experienced at the ARSA locations proposed in this notice will only be temporary, and that once established, the ARSA's will result in efficient terminal area operations. This has been the experience at the vast majority of ARSA sites that have already been implemented. In addition, establishment of the proposed ARSA sites will contribute to a reduction in near and actual midair collisions. For these reasons, FAA expects that establishment of the ARSA sites proposed in this notice will produce long term, ongoing benefits that will far exceed their costs, which are essentially transitional in nature.

#### *International Trade Impact Analysis*

This proposed regulation will only affect terminal airspace operating procedures at selected airports within the United States. As such, it will have no effect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

#### *Regulatory Flexibility Determination*

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities.

The small entities that potentially could be affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operators and other small aviation businesses located at satellite airports within 5 nautical miles of the ARSA center. If the mandatory

participation requirement were to extend down to the surface at these airports, where under current regulations participation in radar services and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. FAA has proposed to exclude many satellite airports located within 5 nautical miles of the primary airport at candidate ARSA sites to avoid adversely impacting their operations and to simplify coordinating ATC responsibilities between the primary and satellite airports. In some cases, the same purposes will be achieved through Letters of Agreement between ATC and the affected airports that establish special procedures for operating to and from these airports. In this manner, FAA expects to eliminate any adverse impact on the operations of small satellite airports that potentially could result from the ARSA program. Similarly, FAA expects to eliminate potentially adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures that will accommodate these activities through local agreements between ATC facilities and the affected organizations. FAA has utilized such arrangements extensively in implementing the ARSA's that have been established to date.

Further, because the FAA expects that any delay problems that may initially develop following implementation of an ARSA will be transitory, and because the airports that will be affected by the ARSA program represent only a small proportion of all the public use airports in operation within the United States, small entities of any type that use aircraft in the course of their business will not be adversely impacted.

For these reasons, the FAA certifies that the proposed regulation, if adopted, will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

#### *List of Subjects in 14 CFR Part 71*

Aviation safety, Airport radar service areas.

#### *The Proposed Amendment*

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:



**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983]; 14 CFR 11.69.

**§ 71.501 [Amended]**

2. Section 71.501 is amended as follows:

**Evansville Dress Regional Airport, IN [New]**

That airspace extending upward from the surface to and including 4,500 feet MSL within a 5-mile radius of the Evansville Dress Regional Airport (lat. 38°02'17" N., long. 87°31'50" W.), excluding that airspace extending upward from the surface to 1,600 feet MSL within a 1 1/4 mile radius of the Skylane Airport (lat. 38°01'00" N., long. 87°35'50" W.); and that airspace extending upward from 1,600 feet MSL to and including 4,500 feet MSL within a 10-mile radius of the airport. This airport radar service area is effective during the specific days and hours of operation of the Evansville Tower and Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

**Laughlin AFB, TX [New]**

That airspace extending upward from the surface to and including 5,100 feet MSL within a 5-mile radius of Laughlin AFB (lat. 29°21'35" N., long. 100°46'35" W.), and that airspace extending upward from 2,500 feet MSL to and including 5,100 feet MSL within a 10-mile radius of Laughlin AFB. This airport radar service area (ARSA) excludes that airspace in Mexico. This ARSA is effective during the specific days and hours of operation of the Laughlin Tower and Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

**Midland Regional Airport, TX [New]**

That airspace extending upward from the surface to and including 6,900 feet MSL within a 5-mile radius of the Midland Regional Airport (lat. 31°56'33" N., long. 102°12'06" W.), and that airspace extending upward from 4,200 feet MSL to and including 6,900 feet MSL within a 10-mile radius of the airport. This airport radar service area is effective during the specific days and hours of operation of the Midland Tower and Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

**Portland International Jetport, ME [New]**

That airspace extending upward from the surface to and including 4,100 feet MSL

within a 5-mile radius of the Portland International Jetport (lat. 43°38'46" N., long. 70°18'33" W.), and that airspace extending upward from 1,500 feet MSL to and including 4,100 feet MSL within a 10-mile radius of the airport. This airport radar service area is effective during the specific days and hours of operation of the Portland Tower and Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

**Springfield Capital Airport, IL [New]**

That airspace extending upward from the surface to and including 4,600 feet MSL within a 5-mile radius of the Capital Airport (lat. 39°50'37" N., long. 89°40'38" W.), and that airspace extending upward from 1,800 feet MSL to and including 4,600 feet MSL within a 10-mile radius of the airport. This airport radar service area is effective during the specific days and hours of operation of the Springfield Tower and Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

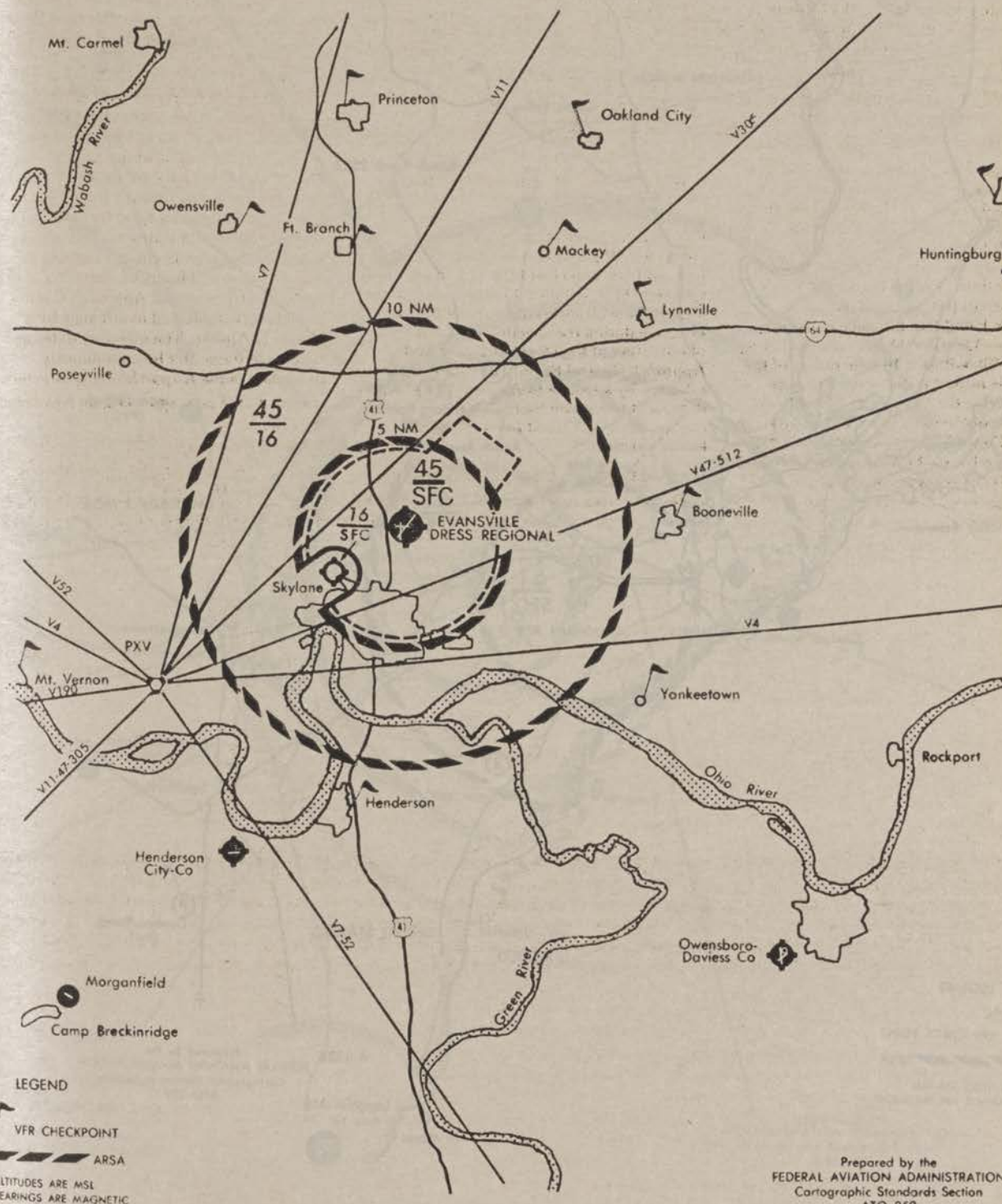
Issued in Washington, DC, on November 20, 1987.

**Daniel J. Peterson,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

**BILLING CODE 4910-13-M**



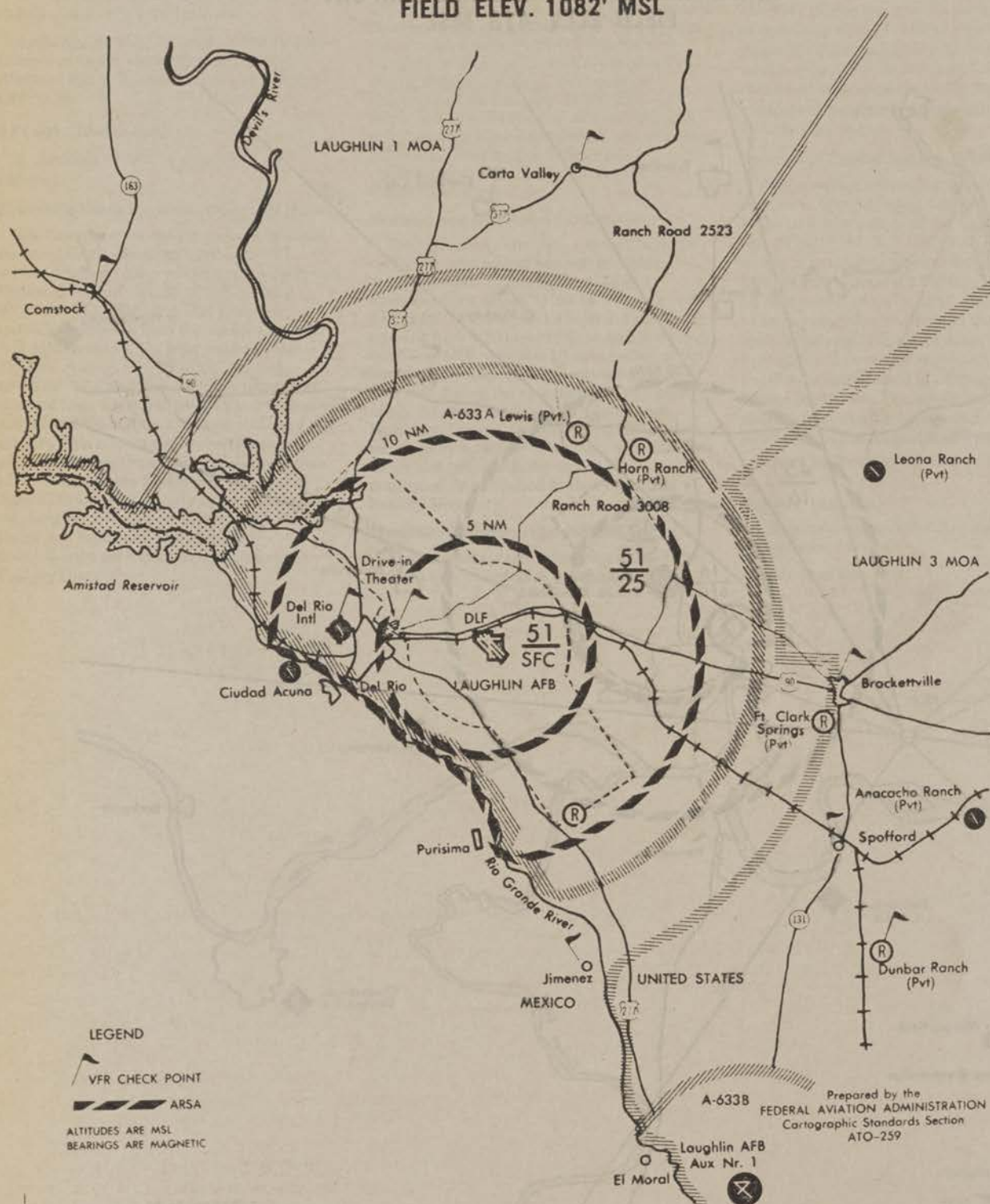
**AIRPORT RADAR SERVICE AREA**  
(NOT TO BE USED FOR NAVIGATION)**EVANSVILLE, INDIANA**  
**EVANSVILLE DRESS REGIONAL AIRPORT**  
**FIELD ELEV. 418' MSL**



# AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

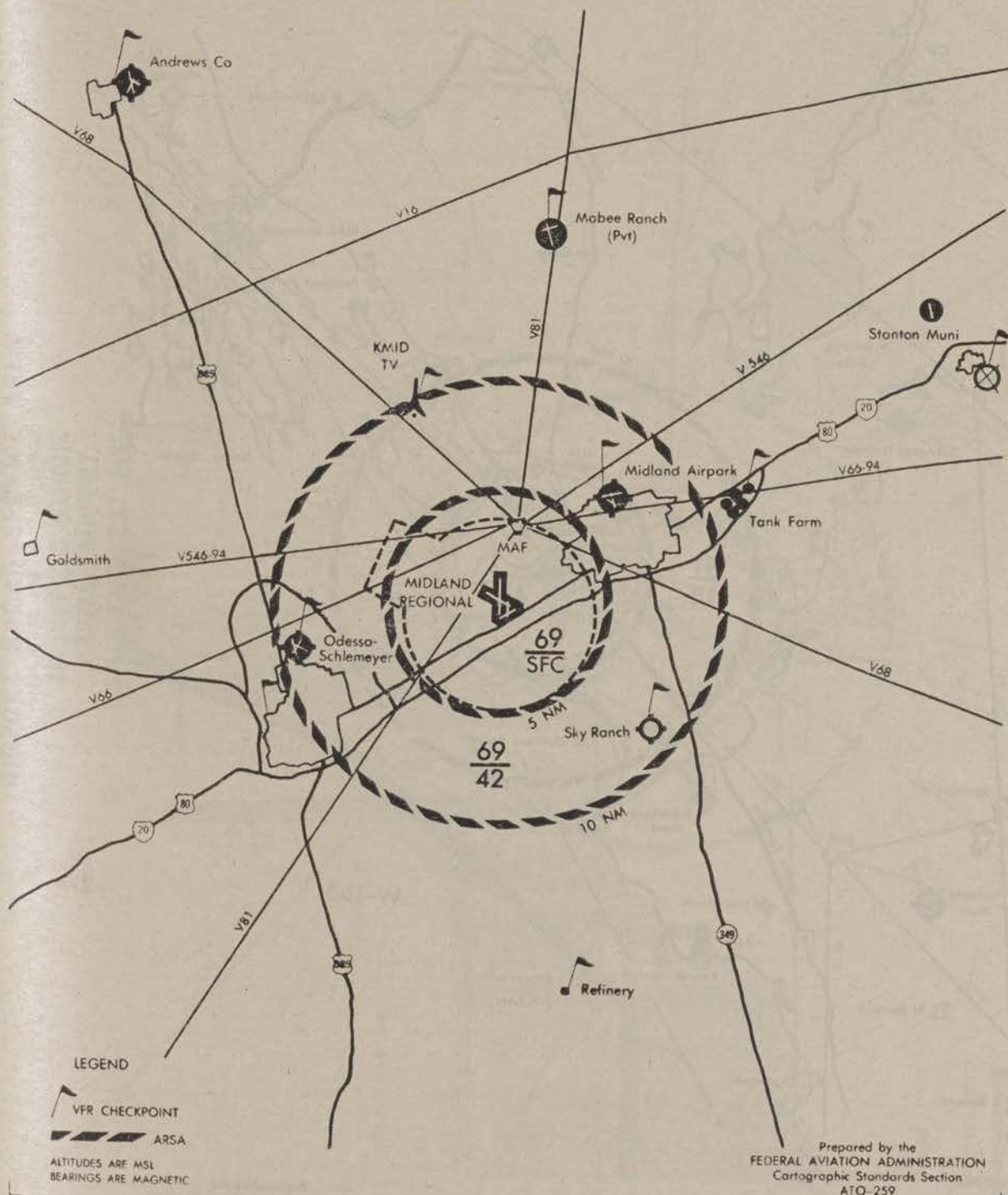
DEL RIO, TEXAS  
LAUGHLIN AFB  
FIELD ELEV. 1082' MSL





**AIRPORT RADAR SERVICE AREA**

(NOT TO BE USED FOR NAVIGATION)

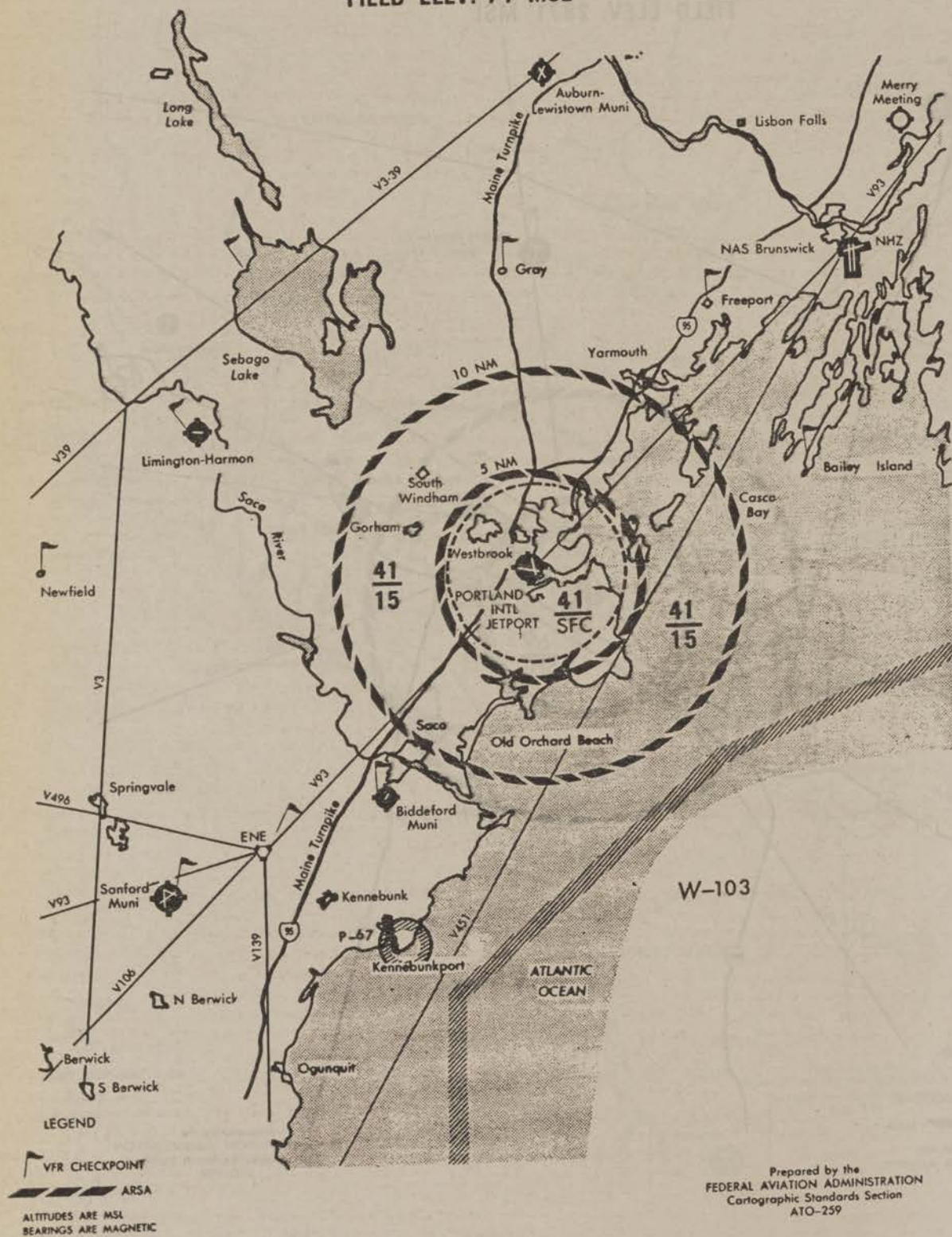
**MIDLAND, TEXAS  
MIDLAND REGIONAL AIRPORT  
FIELD ELEV. 2871' MSL**



# AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

PORTLAND, MAINE  
PORTLAND INTERNATIONAL JETPORT  
FIELD ELEV. 74' MSL

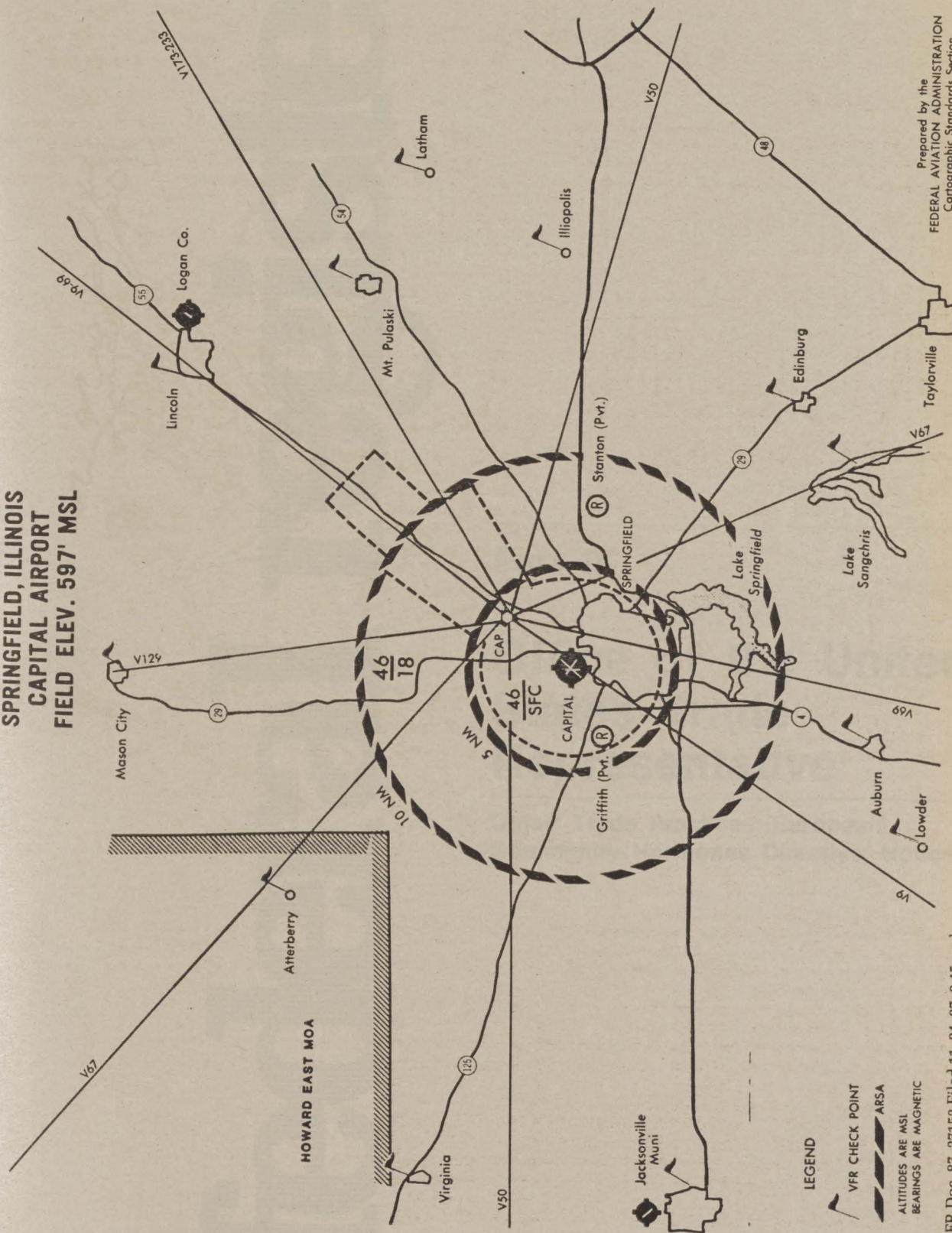




# AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

**AIRPORT RADAR SERVICE AREA**  
(NOT TO BE USED FOR NAVIGATION)  
**SPRINGFIELD, ILLINOIS**  
**CAPITAL AIRPORT**  
**FIELD ELEV. 597' MSL**



Prepared by the  
FEDERAL AVIATION ADMINISTRATION  
Cartographic Standards Section  
ATO-239

## LEGEND

VFR CHECK POINT

ARSA

ALTITUDES ARE MSL

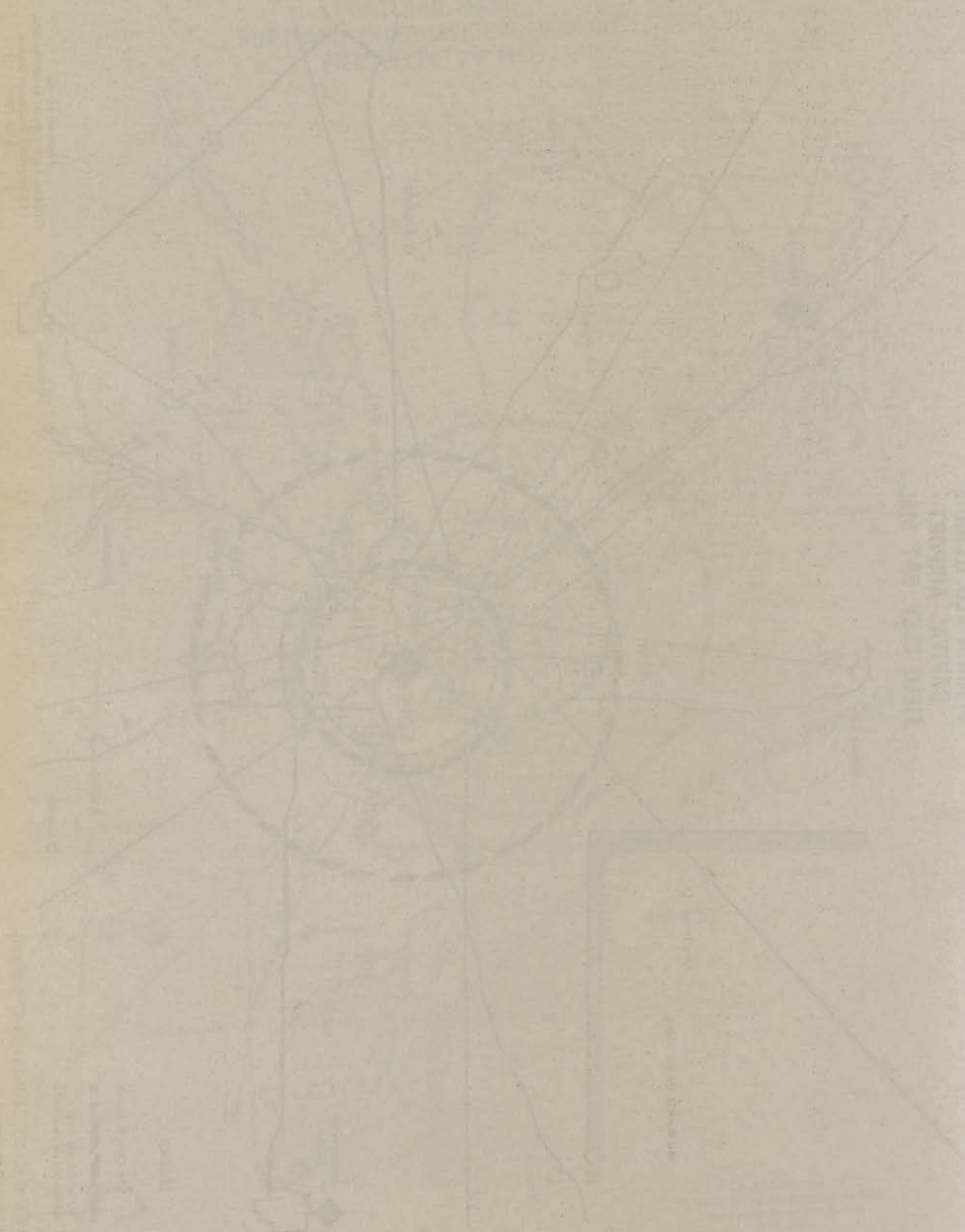
BEARINGS ARE MAGNETIC

[FR Doc. 87-27152 Filed 11-24-87; 8:45 am]

BILLING CODE 4910-13-C



# AIRPORT RADAR CARBON AREA





# Export Letter

Wednesday  
November 25, 1987

## Part IV

## Office of the United States Trade Representative

Unfair Trade Practices; European Community Hormones Directive; Notice



# OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

## Unfair Trade Practices; European Community Hormones Directive

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Request for public comments on possible U.S. actions in response to the European Community's Animal Hormone Directive.

**SUMMARY:** The section 301 Committee will conduct a public hearing on possible U.S. actions in response to the European Community's Animal Hormone Directive.

**FOR FURTHER INFORMATION CONTACT:** Donald S. Abelson, Director, Technical Trade Barriers, Office of the United States Trade Representative (USTR), 600 17th Street NW., Washington, DC 20506, (202) 395-3063; or Richard Parker, Assistant General Counsel, USTR, (202) 395-6800.

### Background

In December 1985, the European Community (EC) adopted the "Council Directive Prohibiting the Use in Livestock Farming of Certain Substances Having a Hormonal Action" ("Hormone Directive"). The directive will prohibit imports into EC member countries of any meat produced from animals treated with growth hormones. It is scheduled to become effective January 1, 1988.

The United States considers that the directive is not based on valid scientific evidence, and that it constitutes an unjustifiable restriction on trade. The United States has repeatedly protested the directive both bilaterally and within the framework of the Agreement on Technical Barriers to Trade ("Standards Code") of the General Agreement on Tariffs and Trade (GATT).

In January 1987, the United States requested consultations with the EC under Article 14.1 of the Standards Code. These consultations were held in February and April, without satisfactory results. On April 29, 1987, we requested the GATT Committee on Technical Barriers to Trade to investigate the matter. The Committee met in May, June, July and September. That investigation failed to yield a solution because of EC insistence, against the weight of scientific evidence, that consumption of meat from animals treated with growth hormones is dangerous to human health. On July 15, 1987, the United States asked for the formation of a Technical Experts Group (TEG) under Article 14.9 of the Standards Code, in order to examine the

scientific basis, if any, for the EC claim. The EC blocked, and continues to block, the formation of such a group of experts. Additional consultations have failed to yield meaningful progress on the underlying issue.

Based on a recent decision of the EC Council of Agricultural Ministers, the EC Commission has assured us that all member states will continue their present practices with regard to the importation of U.S. meat for 12 months. However, there is no agreement on the resolution of the problem beyond the 12-month transition period.

The United States feels compelled to respond to the Hormone Directive by proceeding to consider increasing customs duties or otherwise restricting the importation of products of the EC having a value comparable to the effect on United States commerce of implementation of the directive. Our assessment is that the comparable value is approximately \$100 million. Generally the Administration is considering increasing customs duties to a prohibitive rate of 100 percent *ad valorem* on some combination of products listed in the following annex. Furthermore, the Administration is considering making these increases effective soon after the implementation of the Hormone Directive on Jan. 1, unless the EC has acted by that time to ensure that the directive does not impede U.S. meat exports. We expect the EC to permit dispute settlement procedures to proceed during the transition period.

Under section 301 of the Trade Act of 1974, as amended, 19 U.S.C. 2411, the President is authorized to take all appropriate and feasible action within his power to obtain the elimination of an act, policy or practice of a foreign government or instrumentality that is inconsistent with, or denies the U.S. benefits under, a trade agreement; or is otherwise unjustifiable, unreasonable or discriminatory and a burden or restriction on U.S. commerce. Section 301(b)(2) expressly authorizes the President to impose duties or other import restrictions on the goods of a foreign country or instrumentality for such time as he deems appropriate. Measures under section 301 may be taken on a discriminatory or nondiscriminatory basis at the discretion of the President.

### Public Hearing

The section 301 Committee will hold a hearing at 9:30 a.m. on Wednesday, Dec. 9, 1987, regarding products of the EC that may be subject to increased U.S. customs duties or other import restrictions for the reasons explained

above. The Committee will consider public comments in recommending any action under section 301 to the U.S. Trade Representative for his recommendation to the President. In particular, the section 301 Committee seeks interested persons' assessment of: (1) The appropriateness of the products being considered for possible retaliation; (2) the levels at which U.S. customs duties should be set; and (3) the degree to which increased duties might have an adverse impact on U.S. consumers of the products concerned.

Products being considered for increased duties or other import restrictions are listed in the attached annex. Additional products may be considered and notified for public comment at a later date, as necessary to respond to comments provided in these hearings.

The hearings will be held at the Department of Commerce, Room B841, Fourteenth St. and Constitution Avenue NW., Washington, DC. Admittance is through the Fourteenth St. entrance. Interested persons wishing to testify orally must provide written notice of their intention by noon on December 3, 1987, to Carolyn Frank, USTR, Room 521, 600 17th Street NW., Washington, DC 20506. In addition, they must provide the following information: (1) Their names, addresses, and telephone numbers; and (2) a summary of their presentation, including the products, with Tariff Schedules of the United States item numbers, to be discussed.

Persons presenting oral testimony must submit a complete written statement in 20 copies by noon, December 7, 1987, to Carolyn Frank at the above address. Remarks at the hearing will be limited to 5 minutes.

Persons not wishing to participate in the hearing may submit a written statement in 20 copies by noon, December 11, 1987. All written comments must be filed in accordance with 15 CFR 2006.8.

Submissions should indicate clearly any information for which business proprietary treatment is requested and why such information should be accorded proprietary treatment. A non-confidential summary must be included. In addition, submissions should indicate at the cover page that business proprietary information is included and each page subject to a request for proprietary treatment must be marked at the top: "BUSINESS PROPRIETARY."

The products being considered for increased duties or other import restrictions are listed in the annex to this notice in terms of the nomenclature of the current Tariff Schedules of the



United States (TSUS). Inasmuch as the target date for implementation of the Harmonized System tariff nomenclature by the United States is January 1, 1988, a supplemental notice will be issued giving the corresponding product categories in the nomenclature of the proposed Harmonized Tariff Schedule of the United States which will be considered for increased duties or other import restrictions.

Judith Hippler Bello,

Chairman, Section 301 Committee.

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## Annex

Articles, the product of the European Community, classified in the following provisions of the Tariff Schedules of the United States (TSUS) are being considered for increased duties:

TSUS or TSUSA 1/ item number	Article
	: [The bracketed language in this list is included only : to clarify the scope of the numbered items which are : being considered, and such language is not itself intended : to describe articles which are under consideration.]
	: Meats (except meat offal), fresh, chilled, or frozen, : of all animals (except birds):
	: Cattle:
106.1060	: Beef, without bone
	: Pork, prepared or preserved (except sausages):
	: Not boned and cooked and packed in airtight : containers:
107.3020	: Hams and shoulders
	: Boned and cooked and packed in airtight : containers:
	: [Hams and shoulders; bacon]
107.3560	: Other
	: Fish, fresh, chilled, or frozen, whether or not : whole, but not otherwise prepared or preserved:
	: [Sea herring, smelts, and tuna]
	: Other:
	: Skinned and boned, whether or not divided : into pieces, and frozen into blocks each : weighing over 10 pounds, imported to be : minced, ground, or cut into pieces of : uniform weights and dimensions:
	: [Cod]
	: Flatfish:
110.4724	: Turbot
110.4726	: Other
110.4730	: Haddock
110.4740	: Pollock
110.4755	: Whiting
110.4760	: Atlantic ocean perch (rosefish)
110.4765	: Other

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).



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TSUS or TSUSA <u>1</u> / item number	Article
	Swiss or Emmenthaler cheese with eye formation, Gruyere-process cheese, Gammelost, and Nokkelost:
117.6025	Swiss or Emmenthaler cheese with eye formation
117.6045	Gruyere-process cheese
	Leather, in the rough, partly finished or finished:
	Chamois:
121.10	Oil-tanned
	Vegetables, fresh, chilled, or frozen (but not reduced in size nor otherwise prepared or preserved):
	Peppers:
	[Chili]
137.1020	Other
	Vegetables (whether or not reduced in size), packed in salt, in brine, pickled, or otherwise prepared or preserved (except vegetables in subpart B of part 8, schedule 1, of the TSUS):
	Tomatoes:
141.65	Paste and sauce
141.66	Other
	Apples, fresh, or prepared or preserved:
146.12	Dried
	Cherries, fresh, or prepared or preserved:
	In brine:
146.96	With pits removed
	Coffee extracts, essences, and concentrates (including soluble or instant coffee):
160.20	Soluble or instant coffee (containing no admixture of sugar, cereal, or other additive)
	Fruit juices, including mixed fruit juices, concen- trated or not concentrated, whether or not sweetened:
	Not mixed and not containing over 1.0 percent of ethyl alcohol by volume:
	[Apple, pear, citrus fruits, grape, pineapple, prune]
165.55	Other

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).



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TSUS or TSUSA 1/ item number	Article
	Vermuth:
167.40	In containers each holding not over 1 gallon
167.42	In containers each holding over 1 gallon
	Fermented alcoholic beverages (other than ale, porter, stout, beer, champagne and other sparkling wines, fermented cider, prune wine, rice wine or sake, still wines produced from grapes, and vermouth):
167.5050	Containing less than 7 percent alcohol by volume
	Animal feeds, and ingredients therefor, not specially provided for:
	Byproducts obtained from the milling of grains, mixed feeds, and mixed-feed ingredients:
184.7020	Pet food packaged for retail sale
	Intestines, weasands, bladders, tendons, and integuments, not specially provided for, including any of the foregoing prepared for use as sausage casings:
	Prepared for use as sausage casings:
	[Sheep, lamb, and goat]
190.5840	Other
	Licorice:
192.45	Extract
	Photographic gelatin:
455.22	Valued not over 80 cents per pound
455.24	Valued over 80 cents per pound
741.35	Imitation gemstones (except imitation gemstone beads)

1/ Tariff Schedules of the United States Annotated (19 U.S.C. 1202).

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THE  
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SHERIFF

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COUNTY OF  
SHERBORN

IN THE  
MAYOR'S COURT

OF THE  
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SHERIFF

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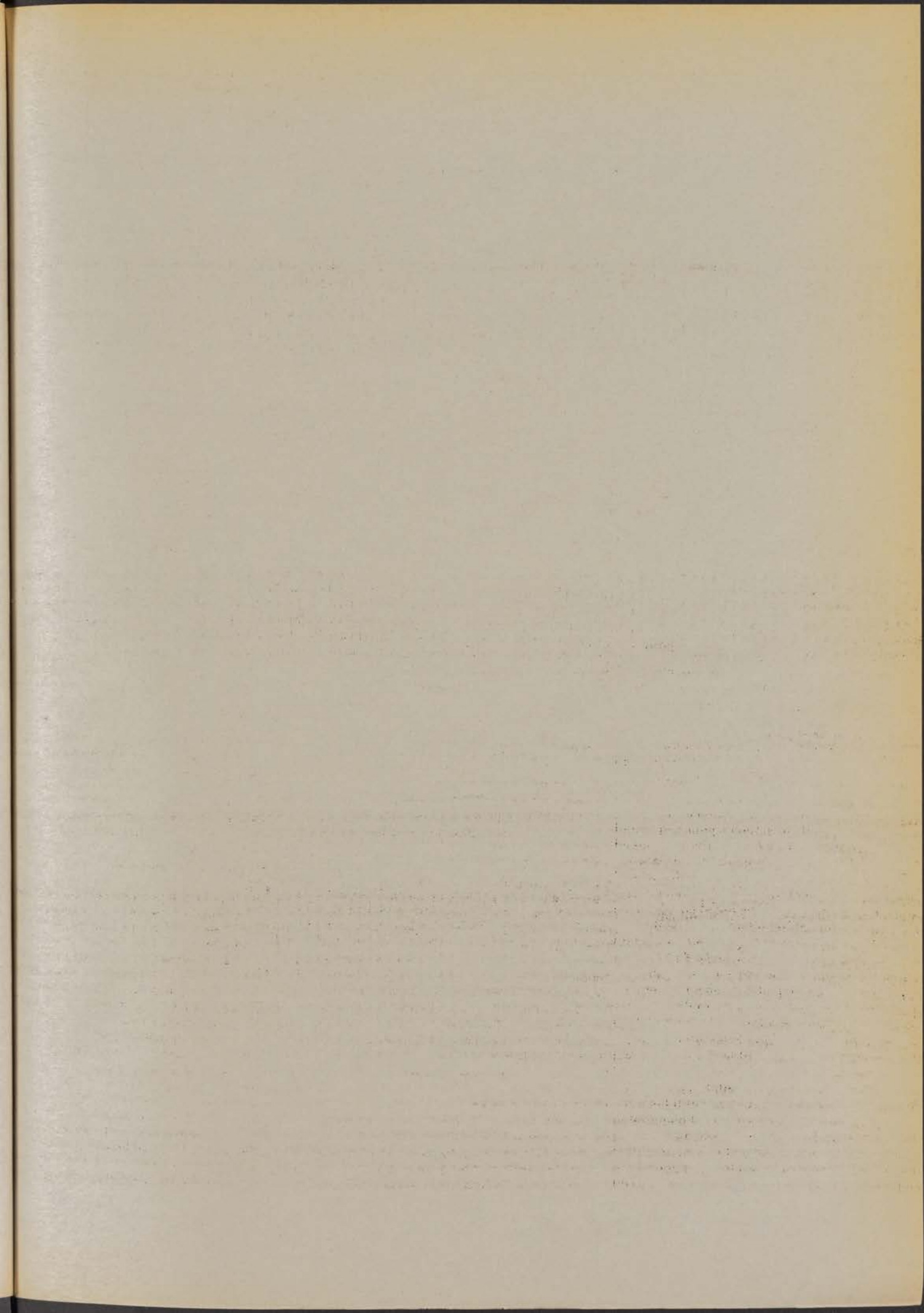
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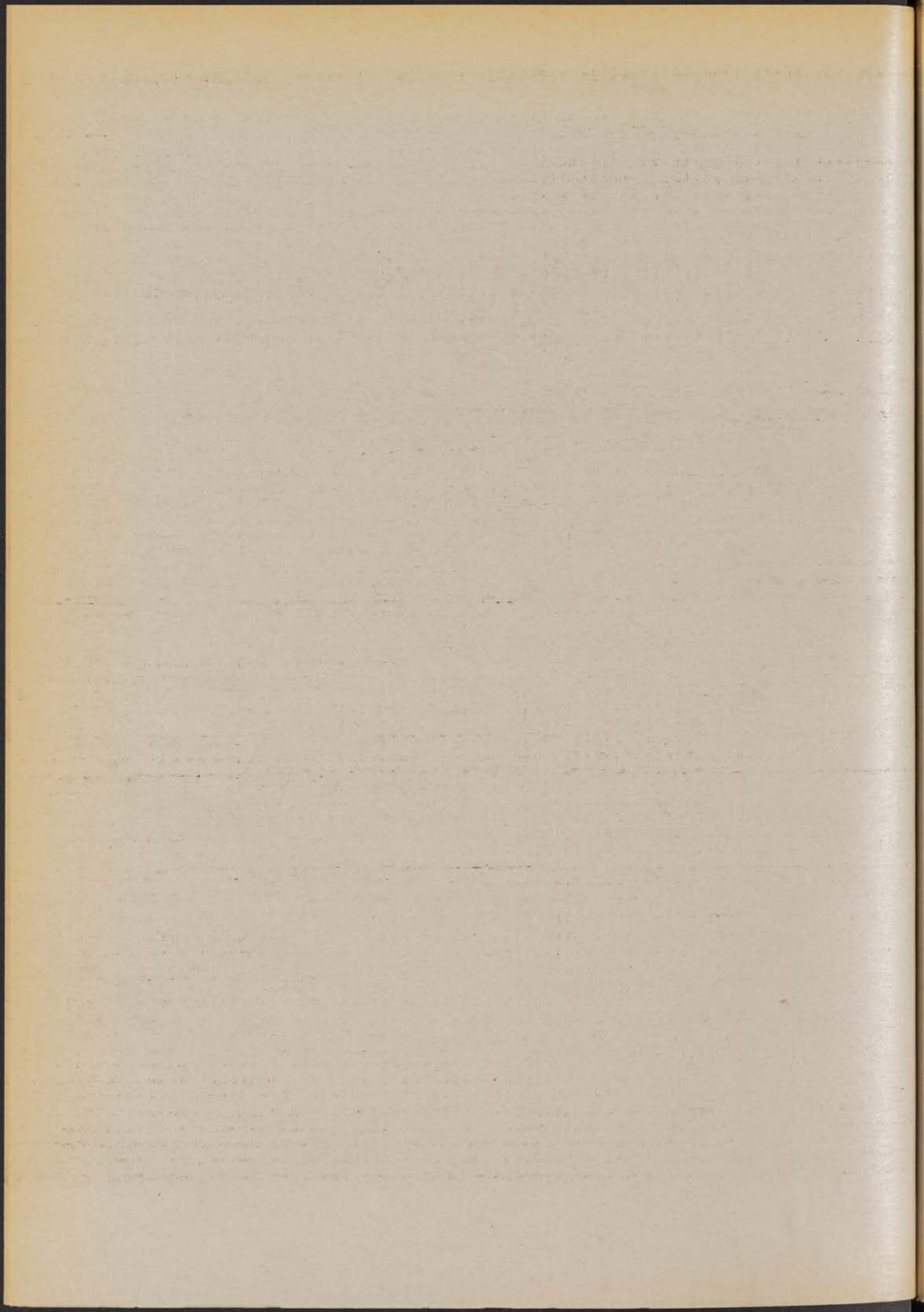
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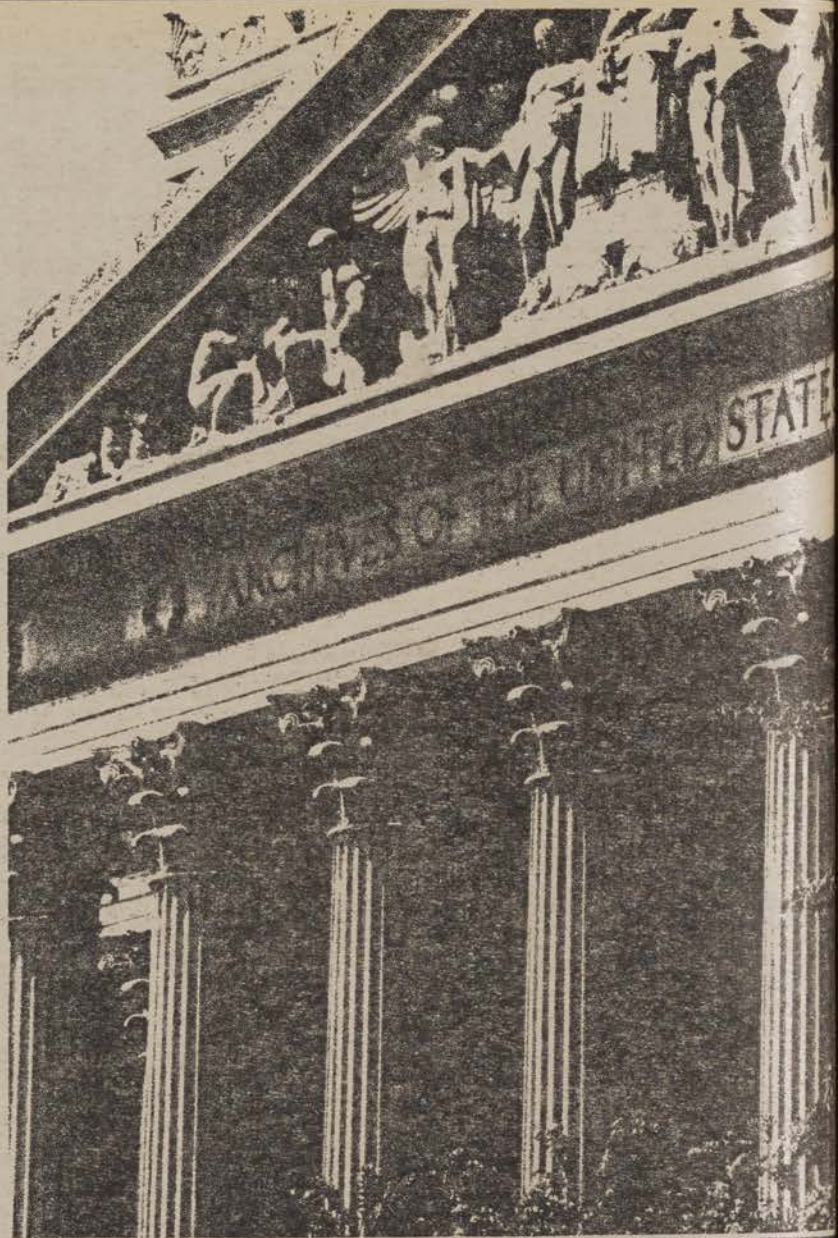
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